

	State of Alaska Department of Corrections Policies and Procedures		Index #: 202.18	Page 1 of 19	
			Effective: 05/05/08	Reviewed:	
			Distribution: Public	Due for Rev:	05/10
	Chapter:	Personnel			
Subject:	Drug/Alcohol Testing & Disciplinary Policy for Employees Required to Hold Commercial Driver's License				

I. Authority

In accordance with 22 AAC 05.155, the Department will maintain a manual comprised of policies and procedures established by the Commissioner to interpret and implement relevant sections of the Alaska Statutes and 22AAC. This policy also references Federal regulations.

II. References

This policy and procedure is issued to comply with U.S. Department of Transportation and Federal Highway Administration regulations detailed in Title 49, Code of Federal Regulations (CFR).

III. Purpose

This policy and procedure explains the Department's drug and alcohol testing program, assigns responsibility, and details the steps to be followed by managers, supervisors, and covered employees in the implementation of this program. It also provides the appropriate disciplinary actions when such employees engage in drug- or alcohol-related prohibited conduct.

IV. Application

All Department Employees required to hold a CDL.

V. Definitions

For purposes of this policy and procedure, the following definitions apply:

A. Alcohol or Alcoholic Beverage

The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular-weight alcohols, including methyl or isopropyl alcohol. Alcoholic beverages include: (a) Beer as defined in 26 U.S.C. 5052(a) of the Internal Revenue Code of 1954, (b) wine of not less than one-half of one per centum of alcohol by volume, or (c) distilled spirits as defined in section 5002(a)(8), of such Code.

B. Alcohol Use

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

C. CDL Drug/Alcohol Testing Program Manager

The designated Division of Personnel Management Services Team member who administers the CDL drug and alcohol testing program for this Department and receives test results and coordinates drug and alcohol testing with the Designated Employer Representative. The CDL Drug/Alcohol Testing Program Manager acts as the single point of contact for questions regarding administering the drug and alcohol testing program and U.S. Department of Transportation regulations detailed in Title 49 CFR Part 40, Part 382, and Part 383.

D. Commercial Motor Vehicle

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

1. Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or
2. Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or
3. Is designed to transport 16 or more passengers, including the driver; or

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4. is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (47 U.S.C 5103(b) and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

E. Contract Test Administrator

To relieve State agencies of the burden of administering a drug and alcohol testing program, the State of Alaska contracts out those responsibilities with an appropriate private agency designated as the Contract Test Administrator. The Contract Test Administrator is responsible for randomly selecting employees to be tested on a monthly basis, informing the respective CDL Drug/Alcohol Testing Program Manager of those employees selected, collecting and testing samples, reviewing the results by a Medical Review Officer, and providing the results to the CDL Drug/Alcohol Testing Program Manager. The Contract Test Administrator is also available to provide required training to supervisors. Worksafe, Inc., located in Anchorage, through an agreement with the State of Alaska, is currently the Contract Test Administrator (current as of date of this policy and procedure).

F. Contract Collection Site

Local medical clinics, hospitals, or other location staffed by people who have been trained in the testing and collection procedures required under this program. The State's Contract Test Administrator has made arrangements with a large number of these facilities to serve as local collection facilities in as many of the State's duty stations as possible. Some of these facilities are equipped to perform breath alcohol testing as well as collect urine specimens.

G. Controlled Substances and Drugs

For purposes of this policy and procedure, this means marijuana, cocaine, opiates, amphetamines, phencyclidine, or other metabolites. The terms "controlled substance" and "drugs" include legal substances obtained illegally or used in an unauthorized manner, but do not refer to the proper use of controlled substances authorized by law which do not affect job safety or performance.

H. Designated Employer Representative

An individual identified by the Department or agency as able to receive communications and test results from the CDL Drug/Alcohol Testing Program Manager or Contract Testing Administrator; and who is authorized to take immediate actions to have an employee removed from safety-sensitive duties; and to make required decisions in the testing and evaluation processes. This individual must be an employee of the Department and should be designated in writing.

I. Diluted Specimen

A specimen with creatinine and specific gravity values that is lower than expected for human urine. This may be reported as a "Negative Dilute" test result.

J. Disabling Damage (to a Commercial Motor Vehicle when a driver is involved in an accident covered by the testing regulations)

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

1. Disabling Damage includes:

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

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2. Disabling Damage does not include:
 - a. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
 - b. Tire disable without other damage even if no spare tire is available.
 - c. Headlight or taillight damage.
 - d. Damage to turn signals, horn, or windshield wipers which make them inoperative.

- K. Driver
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.
- L. Drug Test
A chemical test of an individual's urine for evidence of dangerous use.
- M. Fails a chemical test for dangerous drugs
The result of a chemical test conducted in accordance with 49 CFR Part 40 is reported as "Positive" for the presence of dangerous drugs or drug metabolites in an individual's system by a Medical Review Officer in accordance with that part.
- N. Intoxicant
Any form of alcohol, dangerous drug, or combination thereof.
- O. Medical Review Officer (MRO)
A licensed physician (medical doctor or doctor of osteopathy) responsible for evaluating laboratory results generated by an employer's drug testing program. The MRO is charged with follow-up inquiries to employees and notification of the employer in accordance with Title 49 CFR for positive drugs tests. The MRO must have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confined positive test result, medical history and any other relevant biomedical information.
- P. Passes a chemical test for dangerous drugs
The result of a chemical test conducted in accordance with Title 49 CFR and reported as "Negative" by a Medical Review Officer.
- Q. Refuse to Submit
An employee fails to provide a urine sample as required by Title 49 CFR, without a genuine inability to provide a specimen (as determined by medical evaluation), after she/he received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.
- R. Return-to-duty Test
The drug and/or alcohol test required of employees who have been removed from the testing program for more than 30 days. The costs of return-to-duty tests are paid by the State.
- S. Safety-Sensitive Functions
Within DOC, all positions requiring a Commercial Driver's License (CDL) perform "safety-sensitive functions." Briefly, Title 49 CFR Section 382.107 defines Safety-Sensitive functions to include driving, loading, repairing, or servicing commercial motor vehicles, supervising these activities, or getting ready to do these activities. The Department considers all CDL holders to be performing safety-sensitive functions, or about to perform safety-sensitive functions, any time they are on duty, regardless of whether they use their CDL on a daily basis or sporadically.
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T. Split Specimen Testing

A method of urine collection and testing where a portion of the specimen collected is poured into a secondary specimen bottle called "split specimen." This is done in the presence of the employee. Both specimen bottles are carefully sealed with tamper evident tape and forwarded to a federally certified laboratory. Under the split specimen methodology, if the primary specimen tests positive for controlled substances, the employee may request (within 72 hours) the split specimen be tested by a second federally certified laboratory. Under the split specimen collection and testing method, the employee may not request the primary specimen be retested.

U. Substance Abuse Professional (SAP)

A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. The Contract Testing Administrator maintains a list of SAPs by community.

V. SAP Evaluation and Follow-up

All CDL employees who test positive for drugs or alcohol and are not dismissed or resign must be evaluated by a SAP. This is to assess whether the employee needs assistance with a drug or alcohol problem. If the SAP recommends any treatment, the employee must complete the recommended treatment and pass a return-to-duty test before being returned to duty in a safety-sensitive position. If the SAP recommends treatment, Title 49 CFR also requires the SAP do a follow-up assessment to assure the employee has successfully met the treatment recommendations. This follow-up cannot be done until after the employee has completed any required inpatient or intensive outpatient treatment. All costs associated with fulfilling return-to-duty requirements for substance abuse, including assessment and treatment, are the responsibility of the employee, with the exception of the Return-to-Duty test, which is paid by the State.

W. Supervisor

Refers to the immediate supervisor or foreman of an employee appointed to a position requiring a CDL.

X. Unannounced Follow-up Testing

If the SAP recommends treatment, Title 49 CFR requires the employee to receive a minimum of six unannounced follow-up tests within the first 12 months after being returned to duty. These tests will be scheduled by the Contract Testing Administrator, paid for by the State, and are in addition to any random tests the employee may be selected for during the period.

VII. Procedure

A. The Division of Personnel Public Protection Management Services Team (PPMST) will assist the Department in its CDL drug and alcohol testing program by providing program oversight and by acting as the Department's CDL Drug/Alcohol Testing Program Manager.

1. The Contract Testing Administrator will administer the drug and alcohol testing program.
2. The director of each agency that has employees in positions requiring a CDL must designate in writing an employee to act as the Designated

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- Employer Representative and provide a copy of this designation to the CDL Drug/Alcohol Testing Program Manager.
3. The Designated Employer Representatives and Supervisors are responsible for following the procedures and adhering to the policies of this directive.
- B. Upon notification that an employee has violated a provision of this policy and procedure, supervisors must immediately remove that employee from performing safety-sensitive functions.
1. Whether they will be allowed to remain in the workplace performing non-safety-sensitive functions or placed on administrative leave with pay will be determined on a case-by-case basis. Supervisors should confer with management and PPMST in making this determination.
 2. If the employee is placed on administrative leave with pay they will be informed that they must provide their supervisor with a contact phone number and remain available during regular scheduled working hours.
- C. Supervisors will usually learn of a positive drug or alcohol test result or other violation of this policy and procedure from the CDL Drug/Alcohol Testing Program Manager through the Designated Employer Representative. In the event a supervisor is informed directly by the employee or the Contract Test Administrator of a positive test result for controlled substances or alcohol (at or above Breath Alcohol Content (BAC) of 0.02), or witnesses a violation of this policy and procedure, the supervisor must take immediate action to remove the employee from performing safety-sensitive functions.
1. Disciplinary consequences prescribed by this policy are minimum levels of actions. In every case involving violations of this policy and procedure, managers/supervisors must contact the PPMST office and Senior Management Consultant to insure that due process requirements are satisfied, and an appropriate level of discipline is determined prior to taking action.
 2. Appropriate discipline will be determined after consideration of the specific offense, the duration and quality of the employee's service to that point, prior discipline, any mitigating factors, and the level of discipline administered to other employees for similar violations under similar circumstances.
- D. Strict confidentiality must be observed during the entire drug and alcohol testing process. Employees must not have any prior knowledge of their selection for drug and/or alcohol testing. The testing schedule shall be maintained by the CDL Drug Alcohol Testing Manager and will only be shared with those Department employees who have a need to know.
- E. A copy of this policy and procedure must be available at each work site where there is a CDL holder. All employees in CDL positions are to be provided a copy of this policy and procedure by their supervisor at the time of hire and will be informed that a copy is available at the work site.
1. The employee will sign a statement certifying that they have received a copy of this policy and procedure.
 2. It is the employee's responsibility to read and be familiar with this policy and procedure.
 3. All employees, prospective employees, rehires, and returned employees in CDL positions must be informed prior to being directed to drug and/or
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alcohol testing that they are being tested as required by this policy and procedure and Title 49 CFR Part 382.

- F. **Prohibited Conduct**
The following conducts are prohibited and will result in action up to and including dismissal, if the outcome of an investigation supports a finding of prohibited conduct.
1. Refusing to immediately submit to a drug or alcohol test when directed in accordance with Title 49 CFR and this policy and procedure.
 2. Testing positive for drugs and/or alcohol in violation of Title 49 CFR and this policy.
 3. Criminal conviction of a drug offense.
 4. Tampering with, adulterating, altering, substituting or otherwise obstructing any drug or alcohol testing process required under Title 49 CFR and this policy.
 5. Reporting to work, or remaining on duty, while having an alcohol concentration of 0.004 or higher.
 6. Consuming or using alcohol while on duty.
 7. Reporting to work within 4 hours of consuming alcohol.
- G. **Two-Year Background Check, Pre-employment Testing, and Rehires, Returning, and Current Employees**
1. In accordance with Title 49 CFR, all appointments into CDL positions are conditional on the applicant successfully meeting the requirements of the drug and alcohol testing program; applicants must be informed of this requirement in the recruitment notice.
 2. Applicants for CDL positions must complete a Certification of Employment as a Commercial Motor Vehicle Operator (employment history) form, except employees already participating in the State of Alaska CDL drug and alcohol testing program.
 3. New hires are conditional on the applicant successfully passing a background check and passing a pre-employment drug test.
 4. Hiring Managers are responsible for assuring that the requirements of this section covering new hires, rehires, returning employees, and promotions, demotions, and transfers, are met.
- H. **Two-Year Background Check**
1. Applicants for positions requiring a CDL must complete the employment history form listing all employers for whom they operated a commercial vehicle during the past ten years and must also sign a Release of Information form authorizing previous employers to release information required by Title 49 CFR Part 382.413. These forms should be provided to the applicants at the time a job interview is scheduled and must be submitted by the applicant at or before the job interview.
 2. Prior to extending a job offer, or within 14 days of extending a job offer, the Hiring Manager must perform a background check of the preceding two years from the date of application for violations of Title 49 CFR.
 3. Any indication that the applicant violated a drug and alcohol testing program or had a positive test result may be disqualifying and Hiring Managers must consult with the CDL Drug/Alcohol Testing Program Manager before proceeding with the hiring process.
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4. Proof of an evaluation by a Substance Abuse Professional and completion of any recommended treatment program is required to be eligible for further consideration.
- I. Pre-employment Drug Test
 1. Applicants may be offered a CDL position, but are not allowed to begin work performing safety-sensitive duties until receipt of a negative test result. It is a violation of Title 49 CFR to put a new hire to work performing safety-sensitive duties prior to successfully passing a pre-employment drug test.
 2. Hiring Managers will complete a Donor Referral Sheet, indicating the test is a pre-employment test, and arrange to send the applicant to the nearest Contract Collection Site.
 - a. The applicant must be informed of the reasons for the test (required by 49 CFR 40 and 49 CFR 382).
 - b. Some collection sites require the completed referral sheet prior to testing and in those situations the referral sheet can be faxed directly to the contract Collection Site. Otherwise the referral sheet will be delivered to the applicant to hand carry.
 - c. The Contract Testing Administrator will assist in making arrangements in locations where no collection site is available, or otherwise assist management, as required.
 3. The CDL Drug/Alcohol Testing Program Manager will receive test results.
 - a. For pre-employment testing, notify the Hiring Manager as soon as a negative test result is received.
 - b. If a pre-employment drug test result is positive, the job offer must be rescinded.
 - c. Prior to any future consideration for a position requiring a CDL, the applicant will need to obtain a substance abuse evaluation by a substance abuse professional and complete all recommended treatment. Evaluation and treatment completion documentation must be submitted to the PPMST.
 - d. Proof of an evaluation by a Substance Abuse Professional and completion of any recommended treatment program is required for the applicant to be eligible for future consideration.
 - J. Assignment and reassignment to CDL duties
 1. Employees who have previously been assigned to work in a CDL position must undergo a pre-employment drug test if they have been out of the random testing pool for longer than 30 days from the date of application.
 2. Contact the CDL Drug/Alcohol Testing Program Manager if there is any question that the former employee has been out of the random pool for more than 30 days.
 3. Employee must also complete an employment history form (or update any previously submitted history).
 4. The Hiring Manager is required to check the preceding two years from the date of application with interim employer(s) for violations of the testing program or positive test results.
 5. Proof of an evaluation by a Substance Abuse Professional and completion of any recommended treatment program is required to be eligible for further consideration.

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6. Hiring Managers must consult with the CDL Drug/Alcohol Testing Program Manager before proceeding with the hiring process.
7. As with new hires, the rehire of an employee into a CDL position is conditional on the employee successfully meeting the requirements of the drug and alcohol program.

K. Return from Layoff or Extended Absence

1. Employees returning from layoff, including seasonal layoff, military leave, or other approved leave of absence are required to meet the pre-employment drug testing and background check requirements if they have been removed from the random listing for 30 days or more.
2. The pre-employment drug test is not required if the employee submits notification of being included in another employer's drug testing program that meets the exemption under Title 49 Part 382.301(b) and has not been removed from that random pool for more than 30 days.
3. Returning employees must submit an employment history form (or update any previously submitted history).
4. The supervisor is required to perform a background check of the preceding two years from the date of submission with any interim employer(s) not previously contacted.
5. The drug testing requirement and background checks must be completed before the employee may return to work.
6. Supervisors discovering any indication that the employee violated a drug and alcohol testing program or had a positive test result must consult with the CDL Drug/Alcohol Testing Program Manager before proceeding.

L. Promotions, Demotions, Transfers

Employees currently participating in the State of Alaska CDL drug and alcohol testing program who are promoted, demoted, or transferred into another CDL position, are not required to undergo a pre-employment drug test or background check.

M. Random Pool

Department of Corrections, plus seven other Executive Branch Departments have positions requiring Commercial Driver's Licenses. The Department of Administration, Division of Personnel (DOP), provides the Contract Testing Administrator a listing of all employees in positions requiring a CDL. This listing is provided monthly and is drawn from information contained in AKPAY. The Contract Testing Administrator enters the names into a pool from which all selections for random tests are drawn. The State of Alaska pool currently contains approximately 875 names.

The Contract Testing Administrator selects the names to be tested using a computerized, scientifically verifiable random selection program. The frequency of the selection process is determined mutually by the State and the Contract Testing Administrator. During each selection, all CDL employees have an equal chance of being selected, regardless of duty station. The Federal Motor Carrier Safety Administration sets the random testing rates, and they are presently requiring 50% of the pool to be tested for drugs and 10% for alcohol on an annual basis.

Once the names are selected and sorted by department and location, the Contract Testing Administrator prepares Random Selection Notices. The Notices are forwarded to the applicable CDL Drug/Alcohol Testing Program Manager

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(PPMST for DOC) by email, who will in turn deliver the Notice to the appropriate Designated Employer Representative. The Random Selection must be kept highly confidential.

N. Upon receipt of Notice

1. Designated Employer Representatives and Supervisors must maintain confidentiality to assure employees to be tested are not alerted prior to being directed to report for testing. The supervisor should be notified before scheduled testing, so work schedules might be changed if necessary. The supervisor must be cautioned not to alert the employee(s) until such time as they need to report to the collection site.
2. Supervisor/Designated Employer Representative Verification of Notice
 - a. Upon receipt of a Random Selection Notice, verify the names of those employees randomly selected to assure they are active DOC employees, under your supervision, and in a CDL position.
 - b. Next to their names on the Notice, indicate any employees who are no longer employed, on seasonal leave, on layoff status or on a long-term leave of absence. Retain a copy of the Notice in the agency administrative files.
 - c. Inform the CDL Drug/Alcohol Testing Program Manager of any employees noted above or who are not under your supervision, not in your agency, or not in a CDL position.
3. Schedule Testing
 - a. The employee's supervisor typically schedules the testing; however, the CDL Drug/Alcohol Testing Program Manager or Designated Employer Representative may also schedule testing.
 - b. Selected employees must be tested if they will be available at some time during the month they are selected for random testing (e.g., supervisors must not declare an employee as unavailable for testing if the employee is on a period of leave, but will return to duty status prior to the end of the month).
 - c. Employees who are on itinerant crews can be tested when they return to their duty station or, if necessary, in the field.
4. Determine which of the employees selected for testing can be referred to a local Contract Collection Site by checking the most current list of sites supplied by the Contract Testing Administrator.
5. Verify the work schedule of the employee(s) to be tested and call the Contract Collection Site to the schedule an appointment(s). Do not alert the employee. Avoid scheduling tests that result in paying overtime to the employee(s).
6. Night/Swing Shift

If the employee(s) to be tested is assigned to a shift falling outside the normal operating hours of the Contract Collection Site, contact the Contract Testing Administrator. They may be able to make arrangements with the Contract Collection Site to be open at a time that falls within the scheduled shift of the employee(s). If not, the employee will either need to be held over/start early and be paid appropriately or have their shift reassigned.
7. Refer the Employee for Testing

To this point, employees should not be aware that they have been selected for testing. Informing the employee involves protecting the

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employee's privacy and maintaining confidentiality. It should be done as close as possible to the actual scheduled test so that the employee proceeds directly to the Contract Collection Site.

Note: The following steps may be performed by the CDL Drug/Alcohol Testing Program Manager, Designated Employer Representative, or the employee's immediate supervisor; however, they are typically completed by the employee's immediate supervisor.

- a. Call the employee to a place of privacy and inform the employee she/he has been selected for random testing as required by this policy and procedure and Title 49 CFR 382.
 - b. Prepare a Donor Referral Form, noting the specific appointment time and the time the employee was notified, and fax to the Contract Collection Site.
 - c. Direct the employee to report immediately to the Contract Collection Site and to make no stops along the way. Direct the employee to take nothing orally until testing is completed. Employees doing so are subject to discipline. Have the employee hand carry the Donor Referral Form with them to the Contract Collection Site.
 - d. Inform the employee that picture identification will be required.
 - e. Inform the employee that failure to keep the appointment or failure to participate in the testing constitutes a positive test and will subject them to discipline, up to and including dismissal.
 - f. If the employee refuses to participate, or states he/she is unable to participate for any reason, ensure you have clearly informed him/her of the consequences. If the employee still refuses or insists he/she is unable to test, contact the CDL Drug/Alcohol Testing Program Manager immediately.
- O. Reasonable Suspicion Testing
Title 49 CFR Sec. 382.307 Reasonable Suspicion Testing states: "(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. (b) An employer shall require a driver to submit a controlled substance test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substance test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances."
- P. Training Supervisors for Reasonable Suspicion Testing
1. Under Title 49 CFR, Observations for Alcohol and/or Controlled Substances, reasonable suspicion testing must be made by a supervisor or agency official who is trained to make an informed determination that reasonable suspicion exists.

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2. Each person designated to supervise drivers must receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use.
 - a. The training will be used by the supervisor to determine whether reasonable suspicion exists to require a driver to undergo testing.
 - b. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.
 3. The CDL Drug/Alcohol Testing Program Manager is responsible for assuring all persons designated to supervise CDL positions receive the required training. The Designated Employer Representative must inform the CDL Drug/Alcohol Testing Program Manager any time a new supervisor is appointed.
- Q. **When Covered Employees Are Subject To Testing**
All DOC employees whose position requires a CDL are considered to be performing safety-sensitive functions, or about to perform safety-sensitive functions, at any time they are on duty. This means that they are subject to reasonable suspicion testing for alcohol and/or drugs at any time they are on duty.
- R. **Reasonable Suspicion Testing Procedures**
1. Under Federal Regulation, supervisors shall require a driver to submit to an alcohol or controlled substances (drug) test when the supervisor determines reasonable suspicion exists that the driver has violated the alcohol prohibitions or controlled substances provisions of the testing regulations.
 - a. Two supervisors should make the determination, one of whom must have received the required supervisory training.
 - b. The determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.
 - c. The observations may include indications of the chronic and withdrawal effects of controlled substances.
 2. Supervisors must make a written record of the observations leading to the alcohol or controlled substance reasonable suspicion test and forward a copy under confidential cover to the PPMST.
 - a. A Supervisor's Reasonable Suspicion Observation Checklist is available from the CDL Drug/Alcohol Testing Program Manager to record the observations.
 - b. Per Title 49 CFR, this record must be made and signed by the supervisor or other official who made the observations within 24 hours of the observed behavior or before the results of the alcohol or controlled substances test are released, whichever is earlier.
 - c. Supervisors should call the PPMST (if they are not already involved) and advise them of the situation and to be looking for the results of the alcohol or drug test.
 3. When reasonable suspicion exists, the supervisor must immediately remove the employee from safety-sensitive functions. Supervisors should follow the testing procedures described previously for random selection testing when referring an employee to reasonable suspicion testing. They should not permit the employee to drive to the Contract Collection Site;
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other arrangements must be made. If there is not a local Contract Collection Site near the duty station, or if the situation occurs outside of the testing facility's normal business hours, supervisors should call the Contract Testing Administrator for immediate assistance.

Note: If a trained supervisor is not available, the official in charge should call the CDL Drug/Alcohol Testing Program Manager or Contract Testing Administrator to discuss the signs and symptoms and arrive at an appropriate response.

4. If prohibited use of alcohol is suspected and a reasonable suspicion alcohol test is not administered within two hours following the determination, supervisors must document the reasons the alcohol test was not promptly administered. They must continue attempts to administer the test. If an alcohol test is not administered within eight hours following the determination, they must cease attempts to administer an alcohol test and state in the observation record the reasons for not administering the test. Forward a copy to the CDL Drug/Alcohol Testing Program Manager.
 5. Once the employee has been to the Contract Collection Site and provided the required sample, supervisors should not permit the employee to return to duty if he/she appears to be unfit for duty. Supervisors should refer to the appropriate bargaining agreement and the PPMST for guidance on the appropriate course of action.
 6. If the employee tests positive for Breath Alcohol Content (BAC) at or above .02, the employee may not return to performing safety-sensitive duties. The procedures for positive alcohol test described in the section regarding "Require Action Upon Receipt of Alcohol Test Result" must be followed.
 7. If the results of the alcohol (less than .02 BAC) or drug test are negative, take no further action under these testing procedures; however, the employee may be subject to disciplinary actions under the appropriate bargaining agreement or this policy, depending on the circumstances that led to the reasonable suspicion determination.
 8. When creditable information leads a supervisor to determine reasonable suspicion exists that the employee consumed alcohol within four hours of reporting to duty or while on duty the employee should be tested for alcohol. Although consuming alcohol within four hours of reporting to duty or while on duty may not necessarily produce a BAC equal to or greater than .02, the consumption of alcohol in itself is a violation of this policy and will be subject to appropriate discipline. The employee may not return to performing safety-sensitive functions until a determination is made that the employee did not violate this policy. The employee should be placed on administrative leave with pay pending review of the allegation.
- S. Post Accident Testing
1. All drivers of Commercial Motor Vehicles are required to undergo post accident drug and alcohol tests as soon as possible following any accident that meets the following conditions:
 - a. The driver was performing safety-sensitive functions with respect to the vehicle, and the accident involved the loss of human life; or
 - b. The driver received a moving violation citation and the accident involved:
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- (1) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (2) 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.

Required Post-Accident Testing Quick Reference Table		
Type of accident involved	Citation issued to the driver?	Required to undergo post-accident testing?
Human Fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away *(See Note)	YES	YES
	NO	NO

Note: Routine occurrences such as pulling a stuck vehicle from a ditch, snow berm, etc., are not considered an "accident" for purposes of this definition.

2. If the post-accident alcohol test result is negative, the employee may be returned to work but may not return to performing safety-sensitive functions pending the results of the drug test.
 3. If the post-accident alcohol test is positive for Breath Alcohol Content (BAC) at or above .02 the employee may not return to performing safety-sensitive duties. The procedures for positive alcohol tests described in the section "Required Action Upon Receipt of Alcohol Test Results" must be followed.
- T. Employee Responsibilities
1. If an employee performing duties as a driver is involved in an accident, he/she will be required to undergo post-accident drug and alcohol testing if the accident meets the conditions for post-accident testing described in the above table. Title 49 CFR 382 and this policy and procedure require the employee to undergo such testing as soon as possible following an accident meeting the conditions for post-accident testing.
 2. Nothing in these requirements should be taken to mean he/she should not first receive necessary medical care or render whatever assistance might be necessary to others involved in the accident.
 3. Employees must not drink alcohol or use substances after an accident and before testing. Employees doing so are subject to discipline.
- U. Department Responsibilities

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1. On notification that a subordinate has been involved in an accident that meets the requirements for testing, supervisors must arrange to have the employee tested for alcohol and drugs.
 2. Supervisors should follow the testing procedure described previously for random selection testing when referring an employee to post-accident testing.
 3. If the employee is hospitalized, required testing can be arranged through the hospital. The CDL Drug/Alcohol Testing Program Manager and Contract Testing Administrator can provide assistance.
 4. Supervisors must notify the CDL Drug/Alcohol Testing Program Manager as soon as possible.
 5. The following testing requirements must be met.
 - a. **Alcohol Test**
If a required post accident alcohol test has not been administered within two hours following the accident, the reasons the test was not promptly administered must be documented. Efforts to test the employee must continue.
 - b. If a required post accident alcohol test is not administered within eight hours following the accident, supervisors should cease attempts to get the employee tested and document the reasons why the test was not promptly administered. Forward a copy to the PPMST.
 - c. **Drug Test**
If a required controlled substances test (drug test) is not administered within 32 hours following the accident, supervisors should cease attempts to get the employee tested, and document the reasons why the test was not promptly administered.
- V. **Contract Testing Administrator Responsibility**
1. If the CDL Drug/Alcohol Testing Program Manager, Designated Employer Representative, or Supervisor requests assistance from the Contract Testing Administrator and they are unable to make arrangements or assist in making arrangements to conduct the testing within the allowable time period, the Contract Testing Administrator is responsible for documenting the reasons why the testing could not be conducted.
- W. **Required Action Upon Receipt of Alcohol Test Results**
1. When an employee is given a random, reasonable suspicion, or post-accident alcohol test, the testing device used produces immediate results.
 2. If the test results in a Breath Alcohol Content (BAC) of less than 0.02, the test is considered negative and is reported as such to the CDL Drug/Alcohol Testing Program Manager.
 3. If the test results in a BAC of at least 0.02, Title 49 CFR requires the employee be immediately removed from performing safety-sensitive functions.
 - a. In those situations, the Contract Testing Administrator will immediately call the contact listed on the Donor Referral Form which in most cases will be the CDL Drug/Alcohol Testing Program Manager.
 - b. The CDL Drug/Alcohol Testing Program Manager in turn will contact the Designated Employer Representative or Supervisor
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who will have the employee immediately removed from performing safety-sensitive duties.

- c. The supervisor will proceed through the investigatory process to determine appropriate discipline in accordance with personnel rules.
 - d. The PPMST will assist with coordinating all disciplinary consequences, assuring all testing program requirements are met and the employee's due process rights are afforded.
4. If the violation does not require dismissal and the test resulted in a BAC of .02 or greater but less than 0.04, the employee may return to duty but may not return to performing safety-sensitive functions. The employee may return to performing safety-sensitive functions at the start of his/her next regularly scheduled duty period, but not less than 24 hours following administration of the test.
5. If the violation may require dismissal, the employee may not return to performing safety-sensitive functions and may be placed on administrative leave without pay pending review of disciplinary consequences.
- a. Drug testing samples are processed by the Contract Testing Administrator using a federally approved laboratory for testing (certified under the DHHS Mandatory Guidelines for Federal Workplace Drug Testing).
 - b. The current Contract Testing Administrator has a Medical Review Officer (MRO) on staff who reviews the drug test results provided by the testing laboratory. Title 49 CFR require the MRO to review the chain of custody process as a part of verifying a positive drug test result to assure the chain of custody is "complete and sufficient on its face."
 - 1) For a positive drug test result, MRO will immediately attempt to contact the employee and will continue attempting to contact the employee for 48 hours. The MRO may contact the PPMST office for assistance in contacting the employee. Upon contact with the employee, the MRO will discuss the results of the test and what drug or drugs were found. The MRO will consider alternate medical explanations that would explain a positive test result. An example might be prescription drug use where the employee has a current prescription and the physician has stated the employee may safely perform safety-sensitive functions while taking the medication in the prescribed amount.
 - a) The MRO may be able to reach an immediate determination or may require access to the employee's medical records. Access to those records is at the discretion of the employee and is coordinated between the MRO, the employee, and the employee's health care provider.
 - b) If the MRO determines there is an acceptable explanation for the presence of the drug(s) found in the sample, the test will be reported as positive.

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The MRO will verbally inform and instruct the employee as to his/her rights to request a separate test of the split specimen. (The employee is responsible for costs of split specimen testing; see "Split Specimen Testing" below.)

- c) If the MRO determines there is no acceptable explanation for the presence of the drug(s) found in the sample, the test will be reported as positive. The MRO will verbally inform and instruct the employee as to his/her rights to request a separate test of the split specimen. (The employee is responsible for costs of split specimen testing, see "Split Specimen Testing" below.)
- 2) If the MRO is unable to contact the employee within 48 hours, he/she will cease attempts and put the result on a 5-day hold. If the MRO does not hear from the employee during the 5-day hold, the test is reported out as a non-medically verified positive. If the employee comes forward later with a valid explanation (documented serious illness, injury, or other circumstances unavoidable preventing the employee from timely contact with the MRO), the MRO will discuss the results with the employee, and may still change the test result to negative if presented with a valid medical explanation for the positive result.

X. Access to Drug Test Results

When the MRO verifies a test result as positive, the Contract Testing Administrator will fax or email the result to the CDL Drug/Alcohol Testing Program Manager. The CDL Drug/Alcohol Testing Program Manager will provide a copy to the appropriate agency representative for disciplinary action and filing. Drug test results are considered medical records and must be filed in the employee's CDL file, held by the supervisor, and kept separate from the employee's regular personnel file.

Y. Action Upon Receipt of Drug Test Results

- 1. A test result that reports a "Negative" drug test result requires no further action.
- 2. Upon receiving a test result that reports "Negative Dilute" the supervisor must immediately schedule a new test at the same collection site. The MRO may require this test be under direct observation. If the subsequent test is also "Negative Dilute" there will be no additional testing, unless directed by the MRO.
- 3. On receiving a verified positive drug test report the Designated Employer Representative will:
 - a. Immediately notify the employee's supervisor to remove the employee from performing safety-sensitive duties. Caution the supervisor to keep the matter completely confidential. If management decides to place the employee on administrative leave with pay pending an investigating hearing, the employee will be directed to provide their supervisor with a contact phone

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number and to remain available during regular scheduled working hours.

- b. Inform the employee of their right to request a split specimen sample test. See "Split Specimen Testing" below for procedures.
- c. Schedule an investigative hearing immediately. Inform the employee in writing of the meeting and of their right to have union representation present. Fax a copy of the notification letter to the union.
- d. At the investigative hearing, present the employee with the documentation of a positive drug test result. Confirm that he/she is the referenced employee in the report and ask if she/he has anything to say about the matter before a decision is made.
Note: The MRO has already provided the employee an opportunity to explain any circumstances that might preclude a positive drug test result. The hearing will provide yet another opportunity for the employee to offer an explanation. However, the Department is not medically qualified to overturn a decision made by the MRO.
- e. If discipline is imposed, the employee should be presented with the appropriate suspension or termination letter in a timely manner.
- f. Provide the employee with a list of Substance Abuse Professionals (SAPs) meeting federal guidelines. The Contract Testing Administrator maintains a list of SAPs by location.
- g. Advise the employee that Title 49 CFR prohibits any employer from hiring him/her into a position requiring a CDL until he/she has met all the recommendations of a SAP and passed a drug and/or alcohol test.
- h. If the results of the drug test are positive, the PPMST will coordinate all disciplinary consequences, assure all testing program requirements are met, and assure the employee's due process rights are afforded. The employee may request a split specimen sample test.

Z. Split Specimen Testing

- 1. Title 49 CFR Part 382 requires the use of a split specimen collection method for drug testing. At the collection site, the employee's specimen, in the presence of the employee, is split into two different bottles. The primary specimen and the split specimen are then sealed in the employee's presence and forwarded to the testing laboratory, along with the Federal Drug Testing Custody and Control Form.
- 2. In the event of a verified positive drug test the employee may request testing of the split specimen. The request may be made verbally or in writing and must be made within 72 hours of notification by the MRO of the verified positive drug test. An extension of the 72-hour time limit may only be granted by the MRO. The employee must contact the MRO to request the split specimen test.
- 3. On receiving a verified positive drug test report inform the employee of their right to a split specimen test. If they request the split specimen test,

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assist them in contacting the MRO to process their request. Proceed with the investigative hearing and disciplinary actions described previously under "Required actions following receipt of verified positive test results." Do not wait for the results of the split specimen test. Title 49 CFR does not permit employers to allow employees who have tested positive for controlled substances to remain in a safety-sensitive function while awaiting the results of a split specimen test.

- a) If the split specimen test is negative, the entire test is considered to be negative. Rescind all disciplinary actions and reinstate the employee.
- b) Inability to Test Split Specimen. If the split specimen is unavailable, inadequate for testing, or untestable, the MRO must cancel the test and report cancellation and reasons for it to the supervisor and the employee. Reverse all disciplinary actions and reinstate the employee.
- c) Payment Responsibility
It is this Department's policy that employees are responsible for the cost of a split specimen test. If the employee refuses to pay "up front," the Department will be responsible for payment and may take action to withhold the payment from the employee's pay.

AA. Drug and Alcohol Testing Records

- 1. Each supervisor will maintain a separate Employee CDL file on each employee appointed to a CDL position.
- 2. These files will be maintained in a secure location with controlled access. All records related to pre-employment drug testing, employment history checks, drug/alcohol test results, substance abuse evaluations, investigations, disciplinary action, etc. that pertain to the CDL will be maintained in the respective Employee CDL file.
- 3. The original signed certification that the employee was provided a copy of this policy and procedure will be retained permanently in the Employee CDL file.
- 4. Some documents, such as disciplinary or dismissal documents, will also be kept in the Employee's Personnel file.
- 5. The Employee CDL file will be forwarded under confidential cover to the employee's new supervisor when an employee moves to another State CDL position.
- 6. The Employee CDL files for employees who have left State service will be retained as required below under "Record Keeping."

BB. Record Keeping

Per Title 49 CFR, records related to the drug and alcohol testing program must be retained for a period of five years, except records related to the education and training of supervisors and drivers, which must be maintained while the employee performs the functions that require the training; and for two years after ceasing to perform those functions.

VIII. Implementation

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This policy and procedure is effective 14 days following the date signed by the Commissioner. Each Manager shall incorporate the contents of this document into local policy and procedure. All local policies and procedures must conform to the contents of this document; any deviation from the contents of this document must be approved in writing by the Division Director.

4/21/08
Date



Joseph D. Schmidt, Commissioner
Department of Corrections