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PURPOSE OF THIS POLICY

This policy has been developed so that Colorado State University may meet the requirements of The Omnibus Transportation Employees Testing Act of 1991 and the supporting regulations in Title 49 of the Code of Federal Regulations (49 CFR) concerning alcohol and drug testing for employees who drive commercial motor vehicles (CMVs) requiring a commercial driver's license.

In successive sections, the policy provides the following:

1. Definitions of many of the terms used in this policy;

2. General identification of employees/drivers who are covered;

3. Specific requirements for driver conduct with respect to alcohol use, controlled substance use, and testing for alcohol and/or controlled substances use;

4. Explanation of the types of required testing for alcohol and/or controlled substances and the situations under which such tests are required;

5. General description of the procedures used for alcohol and controlled substances testing;

6. Description of the specific consequences faced by a driver who engages in prohibited substance use-related activity;

7. Information about required program records, retention requirements for such records, maintenance of driver confidentiality, and specific authorizations needed for release of certain records

8. Identification of the responsibilities of drivers;

9. Enumeration of the responsibilities of supervisors;

10. Information about policy development, educational materials for drivers, and training for supervisors;
11. Differentiation of the costs the University will pay and the costs which a driver must pay; and

12. Identification of specific program responsibilities by University department.

**DEFINITIONS USED IN THIS POLICY**

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol. (49 CFR 382.107)

*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. ([49 CFR 382.107](#))

*Alcohol use* means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. ([49 CFR 382.107](#))

*CDL driver* means a person holding a Commercial Driver's License (CDL) or a person required to hold a CDL.

*Commerce* means:

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

2. Trade, traffic and transportation in the United States which affects any trade, traffic and transportation described in paragraph (1) of this [definition](#) ([49 CFR 382.107](#)).

*Commercial motor vehicle* means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle:

1. Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 10,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,001 pounds or more, whichever is greater; or

2. Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

3. Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

4. Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary un 49 CFR, subtitle B, Chapter I, subchapter C. [49 CFR 390.5]
**Commercial motor vehicle (CMV) requiring a commercial driver’s license** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

1. Has a gross combination weight rating of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations [(49 CFR 172.F, 49 CFR 382.107)]

**Confirmation test:**

1. For alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration
2. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. [Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.] (49 CFR 382.107)

**Consortium** means an entity, including a group or association of employers or contractors, that provides alcohol or controlled substances testing as required and that acts on behalf of the employers. [(49 CFR 382.107)]

**Controlled substances** means marijuana, cocaine, opiates, amphetamines, and phencyclidine. [(49 CFR 40.85)]

**DOT agency** means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing in accordance with 49 CFR 40. [(49 CFR 382.107)]

**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. For the purposes of pre-employment/pre-duty testing only, the term driver includes a person applying to an employer to drive a commercial motor vehicle. [(49 CFR 382.107)]
Driving time means all time spent at the driving controls of a commercial motor vehicle. ([49 CFR 395.2])

Drugs means the same as controlled substances above.

Employer means any person (including the United States, a State, District of Columbia, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers and representatives. ([49 CFR 382.107])

Medical Review Officer (MRO) means a licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse) that is responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with their medical history and any other relevant biomedical information. The MRO is selected by the University. (49 CFR 40.3)

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until they are relieved from work and all responsibility for performing work. (49 CFR 395.2). On duty time shall include:

1. All time at a carrier 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 motor carrier;

2. All time inspecting, servicing or conditioning any commercial motor vehicle at any time;

3. All driving time as defined in the term driving time above;

4. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;

5. All time loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;

7. 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 49 CFR 382 when directed by a motor carrier; or

8. Performing any other work in the capacity, employ, or service of, a motor carrier; and

9. Performing any compensated work for a person who is not a motor carrier.

*Performing a safety-sensitive function* means a driver is considered to be performing a safety-sensitive function during any period in which they are actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. (49 CFR 382.107)

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

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee to appear for a test when called by a Consortium/Third-Party Administrator (C/TPA);

2. Failure to remain at a testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;

3. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver’s provision of a specimen;

4. Fails to provide adequate breath for testing without a valid medical explanation after they have received notice of the requirement for breath testing,

5. Fails to provide adequate urine for controlled substances testing without a valid medical explanation after they have received notice of the requirement for urine testing, or

6. Fails or declines to take a second test the employer or collector has directed the driver to take;

7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under 49 CFR 10.193 (d). In the case of a pre-employment drug test, the employee has deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment.

8. Engages in conduct that clearly obstructs the testing; or

9. Is reported by the MRO as having a verified adulterated or substituted test result. (49 CFR 382.107)
Safety-sensitive function means any of those on-duty functions set forth in on duty time, paragraphs (1) through (6), above. (49 CFR 382.107)

Screening test (also known as initial test):

1. In alcohol testing, means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in their breath or saliva specimen.

2. In controlled substance testing, means an immunoassay screen to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs. (49 CFR 382.107)

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. This person evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and after-care. (49 CFR 40.3)

APPLICATION OF THIS POLICY

This policy covers all University personnel who are required to drive commercial motor vehicles as part of their job. (See definitions of "driver", "commercial motor vehicle", and other terms used in this document).

POLICY STATEMENT

A. Compliance with this Policy as a Condition of Employment

Compliance and participation in this policy is a condition of employment or appointment as a volunteer in any position that requires a CSU employee/volunteer to drive a commercial motor vehicle.

B. Regulations Cited in this Policy

The citations in parentheses or brackets after paragraphs in this policy denote the specific paragraph and section location of the information in Title 49 of the Code of Federal Regulations (49 CFR). A copy of the applicable parts of 49 CFR is available for review in the Environmental Health Services Department office.

C. Required Driver Conduct (All CDL Drivers)

1. Alcohol
   a. No driver shall -
(1) Use alcohol, as defined in 49 CFR §382.107, or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or

(2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, or distilled spirits as defined in section 5002(a)(8), of such Code. However, this does not apply to possession of wine, beer, or distilled spirits which are:

   __ (i) Manifested and transported as part of a shipment; or

   __ (ii) Possessed or used by bus passengers. (49 CFR 392.5)

   b. Concentration: No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. (49 CFR 382.201)

   c. On-duty use: No driver shall use alcohol while performing safety-sensitive functions. (49 CFR 382.205)

   d. Pre-duty use: No driver shall perform safety-sensitive functions within four hours after using alcohol. (49 CFR 382.207)

   e. Use following an accident: No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until they undergo a post-accident alcohol test, whichever occurs first. (49 CFR 382.209)

2. Controlled substances

   a. Use: No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver’s ability to safely operate a commercial motor vehicle. The University/employing department/supervisor may require a driver to inform them of any therapeutic drug use. ([49 CFR 382.213])

   b. Testing: No driver shall report for duty, remain on duty, or perform a safety-sensitive function, if the driver tests positive for controlled substances. ([49 CFR 382.215])

3. Refusal to submit to a required alcohol or controlled substances test
No driver shall refuse to submit to a required post-accident, random, reasonable suspicion, or follow-up alcohol or controlled substances test as described in D. below. (49 CFR 382.211)

4. University/employing department/supervisor responsibility

If the University/employing department/supervisor has actual knowledge that a driver has participated in any of the prohibited activities in C. 1., 2., or 3. above, they shall not permit the driver to drive a commercial motor vehicle or to perform other safety-sensitive functions. (49 CFR 382.201, 205, 207, 213 and 215)

D. Required Tests *(All CDL Drivers)*

1. Pre-employment testing *(Drivers requiring a CDL License or CMV Drivers That Will Drive Out-of-State)*

A controlled substances test will be administered prior to the first time a driver performs safety-sensitive functions for the University. The driver shall not be allowed to perform safety-sensitive functions unless the driver has received a controlled substances test result from the medical review officer indicating a verified negative test result. [49 CFR 382.301 (a)]

In addition, a prospective driver or driver transferee who has performed safety-sensitive functions for any other employer in the past two years is required to complete and sign a consent form authorizing such previous employers to release alcohol and drug testing information to the University. The specific information to be released includes: alcohol test results with a concentration of 0.04 or greater and verified positive drug test results. The University doesn’t need to administer a controlled substance test if the driver has participated in a suitable drug testing program with a previous employer within the last 30 days and has a history of verified negative results. However, if the University learns from a previous employer that the prospective driver or driver transferee tested positive for drugs, had an alcohol test result of 0.04 or greater, or refused to be tested, they cannot perform safety-sensitive functions until the University has evidence that the driver met all return-to-duty requirements as well as receiving a verified negative result on a pre-employment controlled substances test. [49 CFR 382.301(c) and (d)]

2. Post-accident testing *(All CMV Drivers)*

Tests for alcohol and controlled substances will be administered as soon as practicable after an accident involving a commercial motor vehicle to each driver who was performing safety sensitive functions with respect to the vehicle if the accident involved the loss of human life or the driver receives a citation for a moving traffic violation arising from the accident. Testing is required for: 1) Any human fatality; 2) Citation to driver and immediate medical treatment away from scene; 3) Citation to driver and any vehicle in accident is towed. A driver who is subject to post-accident testing must remain readily available for testing or be deemed to have refused to submit to testing. [49 CFR 382.303 (a)]
If a required alcohol test is not administered within two hours following the accident, the University/supervisor shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If the test is not administered within eight hours following the accident, the University/supervisor shall stop attempts to administer the test and maintain the same record. [49 CFR 382.303 (d)(1)]

If a required controlled substances test is not administered within 32 hours following the accident, the University/supervisor shall stop attempts to administer the test and prepare and maintain on file a record stating the reasons the test was not promptly administered. [49 CFR 382.303 (d)(2)]

The results of a breath or blood test for alcohol, or a urine test for the use of controlled substances, conducted by Federal, state or local officials will meet the requirements if the results of the tests are obtained by the University. [49 CFR 382.303 (g)(1) and (2)]

3. Random testing *(Drivers Requiring a CDL License)*

Tests of randomly selected CDL drivers for alcohol and/or controlled substances will be administered on a periodic basis. The University's random selection occurs early in each quarter of the calendar year and uses a scientifically valid basis that gives each driver an equal chance of being tested each time selections are done. [49 CFR 382.305(i)]

A CDL driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions. [49 CFR 382.305(m)]

The minimum annual percentage rate for random alcohol testing at this time is 10 percent of the average number of driver positions. The minimum annual percentage rate for random controlled substances testing at this time is 25 percent of the average number of driver positions. [49 CFR 382.305 (b)(1) and (2)]

Minimum annual percentage rates for testing may be adjusted each year by the Federal Highway Administration based upon actual test results for the prior year. The minimum annual percentage rate for alcohol testing may vary from 10% to 50%. The minimum annual percentage rate for controlled substances testing may vary from 25% to 50%. [See 49 CFR 382.305(b)(1) and (2) (c), (d), (e), (f), (g) and (h)]

Random drug and alcohol testing rates will be published in the Federal Register, and will be applicable starting January 1 of the calendar year following publication in the Federal Register.

Random alcohol and controlled substances tests are unannounced. Each CDL driver who is notified of random selection shall go to the test site as soon as possible. [49 CFR 382.305(k) and (l)]

4. Reasonable suspicion testing *(All CMV Drivers)*
Tests for alcohol and/or controlled substances are administered when there is reasonable suspicion to believe that a driver has violated the prohibitions in CD, above concerning alcohol and/or controlled substances (except that for the possession of alcohol in C. 1. a. 3. above). The determination that reasonable suspicion exists must be made by a trained supervisor or University official 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. [49 CFR 382.307 (a), (b) and (c)]

Alcohol testing may be done only if the observations above are made while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has stopped performing such functions. [49 CFR 382.307 (d)]

If a required alcohol test is not administered within two hours following the determination of reasonable suspicion, the University/employing department/supervisor shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If it is not administered within eight hours following the determination of reasonable suspicion, the University/employing department/supervisor shall stop attempts to administer an alcohol test and shall record the reasons for not administering the test. [49 CFR 382.307 (e) (1)]

Even in the absence of a reasonable suspicious alcohol test, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse. The University/employing department/supervisor cannot permit the driver to perform safety-sensitive functions, until: an alcohol test is administered and the driver’s alcohol concentration measures less than 0.02; or twenty-four hours have elapsed following the determination that there is reasonable suspicion to believe that the driver has violated the prohibitions concerning the use of alcohol. [49 CFR 382.307 (e) (2) (i) and (ii)]

A written record is to be made of the observations leading to an alcohol and/or controlled substance reasonable suspicion test, and signed by the supervisor or University official who made the observations, within 24 hours of the observed behavior or before the results of the test(s) are released, whichever is earlier. [49 CFR 382.307 (f)]

5. Return-to-duty testing (All CMV Drivers)

Tests for alcohol and/or controlled substances have to be administered before a driver can return to duty requiring the performance of a safety-sensitive function after the driver has engaged in conduct prohibited in C. above. The driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or a return-to-duty controlled substances test with a verified negative result. [49 CFR 40 Subpart O]
6. **Follow-up testing (All CMV Drivers)**

Follow-up tests have to be administered following a determination under F.5 below that a driver needs assistance to resolve problems associated with alcohol misuse and/or use of controlled substances. The Department of Environmental Health Services will ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional in accordance with F. 5. below. [49 CFR 40 Subpart O]

7. **Retesting of a dilute sample**

When a urine drug screen returns negative results, but the sample is determined to be diluted, the driver shall be retested in accordance with recommendations from the Medical Review Officer (MRO).

E. **Procedures for Testing (All CMV Drivers) (All CDL Drivers)**

1. **Notice**

Before performing an alcohol or controlled substances test, the University/supervisor shall notify the driver that the test is required. [49 CFR 382.113]

2. **Testing methods**

Alcohol testing is conducted at a certified laboratory with an evidential breath testing device operated by a certified breath alcohol technician.

Controlled substances testing is performed by analysis of a urine specimen at a certified laboratory. All specimens undergo an initial screen, followed by GC/MS confirmation of all positive screen results. Split urine samples are used so that a driver can request a second test if desired. All controlled substance test results are reviewed by a Medical Review Officer (MRO) before they are reported to the University. The Medical Review Officer will contact the driver before reporting the results to the University if there are any questions. If the driver can’t be contacted within 72 hours, the MRO will contact the University and request they attempt to contact the driver. CSU will attempt to inform the driver to call the MRO within 72 hours. If the driver doesn’t contact the MRO within three days, the driver is then reported as unfit for duty.

3. **Compliance with test procedures**

All alcohol and controlled substances testing will comply with the procedures in 49 CFR 40: “Procedures for Transportation Workplace Drug and Alcohol Testing Programs.” [49 CFR 382.105]

4. **Drug testing**

Drivers will be tested for marijuana, cocaine, opiates, amphetamines and phencyclidine or as otherwise specified in the regulations. [49 CFR 40.85]
The certified laboratory shall have a clear and well-documented procedure for collection, shipment, and accessioning of urine specimens; be secure at all times; use chain of custody procedures to maintain control and accountability of specimens; and have a quality assurance program which covers all aspects of the testing process. [49 CFR 40 Subpart F]

A Medical Review Officer shall review and interpret confirmed positive test results. In carrying out this responsibility, the Medical Review Officer shall examine alternate medical explanations. Prior to making a final decision to verify a positive test result for a driver, the Medical Review Officer shall give the driver an opportunity to discuss the test result. Such contact is confidential. [49 CFR 40 Subpart G]

5. Alcohol testing

Screening and confirmation tests shall use DOT certified breath testing devices. The breath alcohol technician shall be trained to proficiency in the operation of the evidential breath testing device. In order to be used, an evidential breath testing device shall have a quality assurance plan developed by the manufacturer. [49 CFR 40 Subpart J]

If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be performed after a 20-minute wait. [49 CFR 40 Subpart L and M]

F. Consequences for Drivers Engaging in Substance Use-Related Conduct (All CMV Drivers) (All CDL Drivers)

1. Removal from safety-sensitive functions

A driver who has engaged in conduct prohibited in C. above is not permitted to perform safety-sensitive functions, including driving a commercial motor vehicle, except as provided in F. 5. below. [49 CFR 382.501 (a) and (b)]

2. Required evaluation and testing

A driver who has engaged in conduct prohibited in C. above must undergo evaluation by a substance abuse professional, pass return-to-work testing, and satisfy any other requirements of F. 5. below before again being permitted to perform safety-sensitive functions, including driving a commercial motor vehicle. (49 CFR 382.503)

3. Other alcohol related conduct

A driver tested under the provisions of D. above who is found to have an alcohol concentration between 0.02 and 0.039 is not permitted to perform or continue to perform safety-sensitive functions, including driving a commercial motor vehicle, for at least 24 hours following administration of the test. ([49 CFR 382.505 (a)]

4. Federal penalties
If a driver, a supervisor, or the University violates the requirements of F. 1., 2. or 3. above, they are subject to the civil and/or criminal penalty provisions of Title 49 United States Code 521(b).

5. Referral, evaluation and treatment

A driver who has engaged in conduct prohibited in C. above shall be advised by the University Employee Assistance Program of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs. The driver shall be evaluated by a substance abuse professional (SAP) who shall determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and controlled substances use. [49 CFR 40.281]

Before a driver returns to duty requiring the performance of safety-sensitive functions after engaging in conduct prohibited in C. above, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance. [49 CFR 40.305]

A driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall be:

1. evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed above, and

2. subject to unannounced follow-up alcohol and controlled substances tests administered by the employer following the driver’s return to work in a safety-sensitive position. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and shall consist of at least six tests in the first 12 months following the driver’s return to duty. The University/employing department/supervisor may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that such testing is necessary for that particular driver. [49 CFR 40.307(d)]

Follow-up testing shall not exceed 60 months from the date of the driver’s return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary. [49 CFR 40.307(d)(2)]

6. Warnings and disciplinary actions

The University/employing department/supervisor may issue warning(s) to the driver and, if appropriate, recommend issuance of disciplinary action(s) for the driver, up to and including dismissal from employment.
7. Family Medical Leave Act (FMLA)

If the substance abuse professional determines in F. 5. above that the assistance required by a driver includes treatment, the driver may be allowed to use benefits provided for under the FMLA. Specific benefits under the FMLA differ based upon the type of appointment and other factors. Interested persons should contact the Human Resources Department for further information.

The employing department and the Human Resources Department shall review requests for use of FMLA benefits to determine if the driver’s condition qualifies for FMLA, based on the medical certification. It is the driver’s responsibility to demonstrate that the condition is appropriate for leave under FMLA.

8. Americans with Disabilities Act (ADA)

After evaluation by the substance abuse professional in D.5. above, a driver may request that the employer make reasonable accommodation for the driver under ADA. It is the responsibility of the driver to show a condition that qualifies them under ADA. An active user is not protected under ADA, but the employer must accommodate if requested.

The employing department and the Office of Equal Opportunity and Diversity will review requests for accommodation to determine if the driver’s condition qualifies under ADA. If the condition does qualify under ADA, the University/Office of Equal Opportunity and Diversity will then determine whether reasonable accommodation can be made in the particular situation.

G. Handling of Test Results, Records Retention, and Confidentiality (All CMV Drivers) (All CDL Drivers)

1. Retention of records

The University/Environmental Health Services Department shall maintain records of its alcohol misuse and controlled substances use prevention program in a separate and secure location with controlled access. Records associated with alcohol test results indicating an alcohol content of 0.02 or greater, verified positive controlled substances test results, refusals to take required alcohol and/or controlled substances tests, calibration documentation, driver evaluations and referrals, and a copy of each annual calendar year summary will be maintained for a minimum of five years.

Records of negative and cancelled controlled substances test results and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year. [49 CFR 382.401(a) and (b)]

2. Reporting of results

The University/Environmental Health Services Department shall prepare and maintain a summary of the results of its alcohol and controlled substances testing program performed
during the previous calendar year when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the University or any of its drivers. [49 CFR 382.403 (a)]

3. Access to records

The University will not release driver information that is contained in records required to be maintained in G.1. above, except as required by law or expressly authorized or required in G.2. above. A driver is entitled, upon written request to the Environmental Health Services Department, to obtain copies of any records pertaining to the driver’s use of alcohol or controlled substances, including any records pertaining to their alcohol or controlled substances tests. Records shall be made available to a subsequent employer only upon receipt of a written request from a driver. Disclosure to a subsequent employer is permitted only as expressly authorized by the terms of the driver's request. [49 CFR 382.405 (a), (b) and (f)]

4. Medical review officer record retention for controlled substances

The medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results and for a minimum of one year for negative and canceled controlled substances test results.

Except as required by law, no person may obtain the individual controlled substances test results retained by a medical review officer, and the medical review officer shall not release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. [49 CFR 382.409 (a), (b) and (c)]

5. University notifications

The University/employing department shall notify a driver of the results of a pre-employment controlled substances test if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. The Environmental Health Services Department will notify a driver of the results of random, reasonable suspicion and post-accident tests for alcohol and controlled substances. If the controlled substances test results are verified positive, the driver shall also be informed of which controlled substance or substances were verified as positive. [49 CFR 382.411 (a)]

6. Release of alcohol and controlled substances test information by previous employers

The University/employing department/supervisor may obtain, pursuant to a driver’s written consent, any of the information concerning the driver which is maintained under 49 CFR 382.401 by the driver’s previous employers. [49 CFR 40.25]

The University/employing department/supervisor has to obtain, pursuant to a driver’s consent, information on the driver’s alcohol tests with a concentration result of 0.04 or
greater, positive controlled substances test results, and refusals to be tested, within the preceding two years, which are maintained by the driver’s previous employers. [49 CFR 40.25 (b)]

The information in the paragraph directly above must be obtained and reviewed by the University/employing department/supervisor no later than 30 calendar days after the first time a driver performs safety-sensitive functions for the University, if it is not feasible to obtain the information prior to the driver performing safety-sensitive functions. The driver is not permitted to perform safety-sensitive functions after 30 days if the information is not obtained. The University/employing department/supervisor must still obtain the information even if the driver stops performing safety-sensitive functions before the 30 day period expires. [49 CFR 40.25 (d)]

The University/employing department/supervisor must provide to each of the driver’s employers within the two preceding years the driver’s specific, written authorization for release of the information. [49 CFR 40.25 (a) (e) (f)]

The University/employing department/supervisor cannot use a driver to perform safety-sensitive functions if the University/employing department/supervisor obtains information on the driver’s alcohol test with a concentration of 0.04 or greater, verified positive controlled substances test result, or refusal to be tested, by the driver, without obtaining information on a subsequent substance abuse professional evaluation and/or determination and compliance with return-to-duty testing. [49 CFR 40.25 (5) (e)]

**H. Driver Responsibilities (All CMV Drivers) (All CDL Drivers)**

The responsibilities of a covered driver include:

1. Fully complying with the conduct required in C. above
2. Promptly reporting to the testing site and undergoing all required alcohol and/or controlled substances tests
3. Providing adequate breath and/or urine samples for all required alcohol and/or controlled substances tests
4.—Authorizing the release of alcohol and controlled substances testing results from by previous employers and queries of their Commercial Driver’s License Drug and Alcohol Clearinghouse as required by 40 CFR part 382.

4. Signing a certification that they have received a copy of this policy and other educational materials
5. Meeting all return-to-work requirements and stipulations after engaging in conduct prohibited in C. above
7. Not performing any safety-sensitive functions after engaging in conduct prohibited in C. above until all return-to-work requirements have been met

8. Demonstrating that their condition warrants consideration for leave under the Family Medical Leave Act while undergoing prescribed treatment, and

9. Showing that their condition qualifies them for accommodation under the Americans with Disabilities Act

I. Supervisor Responsibilities

The responsibilities of the supervisor of a covered driver include:

1. Notifying the driver to report to the test site for random, reasonable suspicion, post-accident, return-to-work or follow-up alcohol and/or controlled substances testing

2. Making appropriate observations when reasonable suspicion of alcohol abuse and/or controlled substances use seems evident

3. Documenting the observations leading to a reasonable suspicion alcohol and/or controlled substances test for a driver

4. Documenting the reason why a reasonable suspicion alcohol and/or controlled substances test was not promptly administered to a driver

5. Documenting the reason why a required post-accident alcohol and/or controlled substances test was not promptly administered to a driver

6. Making certain that a driver has met all return-to-work requirements and stipulations after engaging in conduct prohibited in C. above

7. Refusing to allow a driver to perform any safety-sensitive functions after engaging in conduct prohibited in above until the driver has met all return-to-work requirements and

8. Not misusing the supervisory responsibility.

J. Alcohol Misuse and Controlled Substances Use Information, Training and Referral

1. University policy on the misuse of alcohol and use of controlled substances

The University/Environmental Health Services Department will provide educational materials that explain the requirements of 49 CFR 382 and the University’s policies and procedures with respect to meeting the requirements. Copies of these materials shall be distributed to each driver prior to the start of alcohol and controlled substances testing and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle. [49 CFR 382.601 (a)]

The materials made available to drivers will cover all the items called out in 49 CFR 382.601 (b). Included in the educational materials will be discussions of: 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 coworker’s); and available methods of intervening when an alcohol or controlled substances problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management.

Each driver is required to sign a statement certifying that they have received a copy of these materials. The University Environmental Health Services Department shall maintain the original of the signed certificate. [49 CFR 382.601 (d)]

2. Training for supervisors

Supervisors of drivers are designated to determine whether reasonable suspicion exists to require a driver to undergo reasonable suspicion testing. Those supervisors shall receive at least 60 minutes of training on alcohol misuse and at least an additional 60 minutes of training on controlled substances use. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. (49 CFR 382.603)

3. Referral, evaluation, and treatment

Please refer to F.5

K. Cost Responsibility

The employing University department pays all testing and processing costs except for the processing of the second part of a split urine sample processed at the request of a driver or driver applicant. The latter shall be paid for by the driver or driver applicant. All time associated with testing will be paid work time except for driver applicants undergoing pre-employment testing and drivers doing return-to-work testing while in an unpaid status.

The driver is responsible for the cost of visits with a Substance Abuse Professional. The driver is also responsible for the costs associated with treatment or other course of action recommended by the Substance Abuse Professional, including, but not limited to, return to duty testing, and any recommended follow up drug and/or alcohol testing.

L. Organizational Responsibilities

1. Environmental Health Services Department

Responsible for the management and administration of the Department of Transportation Program at Colorado State University. The responsibility includes:

a. Designation of the Regulatory Alcohol and Drug Testing Program manager as the person to provide information to and answer questions from covered drivers and supervisors;

b. Preparation and updating of policies and procedures;
c. Disclosure of educational and policy information to covered drivers;

d. Collection of certifications from drivers for receipt of educational and policy information;

e. University compliance;

f. Training of supervisors;

g. Creation, maintenance and updating of required records containing basic information about covered drivers, controlled substances and alcohol tests and test results, and information provided by substance abuse professionals about specific drivers;

h. Filing and storage of records;

i. Preparation and submittal of required reports;

j. Communication with the departments employing covered drivers;

k. Recovery of program operating costs from the departments employing covered drivers;

l. Notification of supervisors about test requirements for their covered drivers; and

m. Obtaining alcohol and controlled substances test results for new hire, te and transfer drivers, and existing drivers from previous employers and from previous employers queries of the Commercial Driver’s License Drug and Alcohol Clearinghouse as required by 40 CFR part 382.

n. Overseeing positive drug and alcohol test follow ups.

2. Human Resources Department

Program responsibilities include:

a. Notifying the Environmental Health Services Department about each open position to be filled that requires a new hire or transfer to possess a commercial driver’s license;

b. Informing applicants for such positions that they will be subject to alcohol and controlled substances testing (including pre-employment controlled substances testing) and will be required to authorize release of testing information by previous employers;

c. Decision-making about a driver’s request for leave under the Family Medical Leave Act to undergo treatment, including review of the recommendation made by the driver’s employing department.

3. Office of Equal Opportunity
Program responsibilities include:

a. Evaluation of driver requests for accommodation under the Americans with Disabilities Act (ADA),
b. Decision-making about whether or not the driver qualifies under the ADA, and
c. When the driver does qualify under the ADA, coordination of efforts to determine whether reasonable accommodation can be made for the driver.

4. Departments/Supervisors/Contacts

Program responsibility consists of informing the Environmental Health Services Department about Colorado State University CMV drivers before they first report for duty as a driver and must not allow an employee to drive who has not been cleared by EHS; and must follow all directions from EHS as to commercial motor vehicles and drivers.

M. Employee Self-Identification Program.

Employees who self-identify and admit to use of alcohol and/or controlled substances may be relieved of certain referral, evaluation and treatment requirements in accordance with 49 CFR 382.121, which the University will follow. The self-identification and admission must be made to the employing department’s supervisor or contact and to Environmental Health Services. The program responsibilities include:

a. Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of 49 CFR 382, provided that:
   (i) The admission is in accordance with this policy;
   (ii) The driver does not self-identify in order to avoid testing under the requirements of 49 CFR 382;
   (iii) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and
   (iv) The driver does not perform a safety sensitive function until the University is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines outlined below.

b. The University qualified voluntary self-identification program contains the following elements:
   (i) It prohibits the University from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of this program and paragraph (a) of this section;
(ii) It allows the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;

(iii) It permits the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;

(iv) It ensures that:

(a) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or

(b) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and

(c) It may incorporate employee monitoring and include non-DOT follow-up testing.

COMPLIANCE WITH THIS POLICY

Compliance with this policy is required. For assistance, contact Environmental Health Services, General Services Building, 970-491-6745, or visit http://www.ehs.colostate.edu/.

APPROVALS

Approved by the Board of Governors (then State Board of Agriculture), 3/19/1997, revised 9/30/2001

Revision 2.0 approved by Lynn Johnson, Vice President for University Operations, 10/25/2016