

Chapter: Driving and State Vehicle Regulations
Title: Commercial Drivers

Effective Date: 12/1/11
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New

ACA Standard(s): N/A

(a) **Policy.**

Employees who operate commercial motor vehicles (CMV) are required to meet federal and state qualification standards, and are subject to alcohol and controlled substance testing under applicable law, including but not limited to the drug and alcohol testing regulations of the U.S. Department of Transportation (DOT) set forth in 49 CFR Part 40, and in the regulations of the Federal Motor Carrier Safety Administration (FMCSA) at 49 CFR Part 382. This policy is intended to implement the requirements of these federal regulations. In the event of a conflict between the provisions of this policy and the requirements of applicable law, the law will control.

The commercial drivers' physical examination program helps ensure Texas Juvenile Justice Department (TJJJD) commercial drivers are physically qualified to operate the agency's CMVs. The alcohol and drug testing program helps prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances.

(b) **Resources.**

The rights and obligations of employers and employees with respect to DOT alcohol and drug testing are complex. Employees who operate a CMV and supervisors of such positions are encouraged to further educate themselves about DOT alcohol and drug testing through review of the applicable regulations and the following DOT publications:

- (1) *What Employees Need to Know About DOT Drug and Alcohol Testing*; and
- (2) *What Employers Need to Know About DOT Drug and Alcohol Testing*.

(c) **Definitions.**

- (1) **Alcohol:** The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol. Alcohol consumption or use means the drinking or swallowing of any beverage, liquid measure or preparation (including any medication), containing alcohol.
- (2) **Breath Alcohol Technician (BAT):** A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
- (3) **Collection site:** A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.
- (4) **Collector:** A person who instructs and assists applicants or employees at a collection site, who receives and makes an initial inspection of the specimen provided, and who initiates and completes the Federal Drug Testing Custody and Control Form (CCF).
- (5) **Commercial Motor Vehicle (CMV):** A vehicle:
 - (A) having a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds; or
 - (B) is designed to carry 16 or more passengers, including the driver; or
 - (C) is of any size and is used to transport hazardous materials which require the vehicle to be placarded under the Hazardous Materials Regulations.
- (6) **Disabling Damage:** Damage that precludes the departure of any vehicle from the scene of an accident in its usual manner in daylight hours after simple repairs.

- (A) Disabling damage includes damage to vehicles that could have been operated, but would have caused further damage if so operated.
- (B) Disabling damage does not include damage that could be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperable.

- (7) **Medical Review Officer (MRO):** A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
- (8) **Safety-sensitive Function:** All time from the time a driver begins to perform any functions related to driving a CMV or is required to be in readiness to drive a CMV until the time he/she is relieved from driving a CMV and all responsibility for performing functions related to driving a CMV. Safety-sensitive functions shall include time spent:
 - (A) waiting to be dispatched while on TJJJ or public property;
 - (B) inspecting or servicing a commercial vehicle;
 - (C) in a commercial vehicle;
 - (D) loading or unloading a commercial vehicle; and
 - (E) repairing or remaining in attendance upon a disabled commercial vehicle.
- (9) **Substance Abuse Professional:** An independent provider qualified to evaluate applicants or employees who have violated a DOT drug and alcohol regulation and make recommendations concerning the applicant's or employee's education, treatment, follow-up testing, and aftercare.

(d) **Applicability.**

- (1) This policy only applies to TJJJ employees whose job duties involve the operation of a CMV (a "commercial driver"), and to applicants for a commercial driver position (an "applicant").
- (2) Except as noted in (d)(4) below, the requirements in this policy are in addition to other policies regarding similar subjects. TJJJ commercial drivers and applicants remain subject to all other requirements and policies applicable to the position held or sought, including training; licensure; medical certification; fitness for duty; reporting of incidents, accidents, citations or charges; and non-DOT alcohol or controlled substance testing.
- (3) Alcohol and controlled substance testing under this policy is applicable only to TJJJ commercial drivers and applicants for commercial driver positions. Alcohol and drug testing requirements for other employees (and for commercial drivers when not engaged in safety-sensitive functions) are contained in PRS.02.18.
- (4) A pre-employment controlled substance test under this policy will also satisfy an applicant's pre-employment drug testing requirement under PRS.02.18.

(e) **Program Manager and Designated Employer Representatives.**

- (1) The director of risk management (located in Central Office) is the program manager for the TJJJ Commercial Driver Alcohol and Drug Testing Program and the primary designated employer representative (DER). The DER:
 - (A) is authorized to take immediate action(s) to remove employees from safety-sensitive functions (e.g., driving or being required to be ready to drive a CMV);
 - (B) is authorized to make required decisions in the alcohol/drug testing and evaluation processes for TJJJ commercial drivers;

- (C) receives Commercial Driver's License (CDL) test results and other communications, consistent with the requirements of this policy; and
 - (D) is responsible for answering commercial drivers' questions regarding this policy and any related training materials.
- (2) To ensure adequate coverage on all shifts and at all locations, the administrator of transportation is designated as the secondary DER, and has the same authority as the primary DER, as listed above.

(f) **Qualifications and Requirements for Commercial Drivers.**

The qualifications and obligations of TJJJ commercial drivers and applicants are summarized in this section. Additional details and guidance for administering these requirements are provided later in this policy.

(1) **Applicants for Commercial Driver Positions.**

- (A) An applicant for a commercial driver position must:
- (i) have a currently valid CDL with a passenger vehicle ("P") endorsement;
 - (ii) have a currently valid DOT medical examiner's certificate, or must obtain a DOT medical examiner's certificate as a condition of being employed in the position;
 - (iii) provide written consent for the release of information by DOT-regulated employers with whom the applicant has been employed in the last two years;
 - (iv) answer questions regarding previous drug and alcohol testing; and
 - (v) submit to a pre-employment controlled substance test and have a negative result before actually performing any safety-sensitive function for the first time.
- (B) If a pre-employment controlled substance test is positive, the applicant may reapply for a commercial driver position only after:
- (i) being evaluated by a Substance Abuse Professional (SAP); and
 - (ii) complying with any treatment recommendations determined by the SAP.

(2) **Commercial Drivers.**

- (A) A commercial driver must have a currently valid CDL with a passenger vehicle ("P") endorsement and must have the CDL in his/her possession while performing safety-sensitive functions.
- (B) If a commercial driver receives a notice that his/her CDL has been suspended or his/her privilege to operate a CMV has been revoked, the driver must:
- (i) not operate a CMV for the agency; and
 - (ii) notify his/her supervisor of the contents of the notice within one business day.
- (C) A commercial driver must have a currently valid DOT medical examiner's certificate, and must keep the original or a copy of the medical examiner's certificate in his/her possession while performing a safety-sensitive function. The driver is also responsible for renewing his/her medical examiner's certificate before it expires.
- (D) A commercial driver must not drive a CMV if he/she is unable to do so safely. A commercial driver must immediately notify his/her supervisor in writing if at any time the driver is

experiencing a medical or physical problem that has the potential to interfere with the driver's ability to perform normal tasks associated with operating a CMV.

- (E) A commercial driver will be immediately removed from duty and is subject to termination upon any of the following:
- (i) consumption of alcohol while on duty;
 - (ii) consumption of alcohol within four hours prior to reporting for duty involving a safety-sensitive function;
 - (iii) consumption of alcohol within eight hours after a work-related accident involving a CMV or prior to undergoing a post-accident alcohol test, whichever occurs first;
 - (iv) reporting for duty or remaining on duty while having an alcohol concentration of 0.04 or greater;
 - (v) reporting for duty or remaining on duty when the driver uses any controlled substance, except when the use is at the instruction of a licensed medical practitioner who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a CMV;
 - (vi) refusing to submit to a required alcohol or drug test;
 - (vii) adulterating or substituting a urine specimen; or
 - (viii) having a positive alcohol test result (0.04 or higher) or a verified confirmed positive drug test result.
- (F) In addition to the prohibited behavior identified in paragraph (f)(2)(E) above, section 522.101 of the Texas Transportation Code prohibits a commercial driver from driving a CMV while having a measurable or detectable amount of alcohol in the driver's system. If an alcohol test reveals a measurable alcohol concentration of less than 0.04, the driver will be:
- (i) immediately removed from duty for a minimum of 24 hours following administration of the alcohol test; and
 - (ii) subjected to disciplinary action if he/she drove a CMV during the shift in which the alcohol test was performed.
- (G) A commercial driver is required to submit to alcohol and controlled substance testing on the following bases:
- (i) random;
 - (ii) reasonable suspicion;
 - (iii) post-accident;
 - (iv) return to duty; and
 - (v) follow-up testing.
- (H) For hiring decisions and disciplinary purposes, refusal to submit to alcohol or controlled substance testing under this policy is treated as a failure to have a negative test result. Conduct which constitutes a refusal to test is summarized in (i)(4) below.
- (I) A commercial driver must immediately notify his/her supervisor of any accident involving a CMV. In addition, the commercial driver must:
- (i) refrain from consuming any alcohol for a period of eight hours after the accident, or until completion of a post-accident alcohol test, whichever occurs first; and

- (ii) remain readily available for post-accident testing for 32 hours after the accident. A driver's failure to remain readily available is a refusal to test. However, the requirement to remain readily available does not:
 - (I) require the driver to delay necessary medical attention for injuries; or
 - (II) prohibit the driver from leaving the scene of an accident for the period necessary to obtain assistance or necessary emergency medical care.

(g) **Supervisor's General Responsibilities.**

This section provides a brief summary of the responsibilities of supervisors of commercial drivers. Additional details and guidance for administering these requirements are provided later in this policy.

- (1) A supervisor who has actual knowledge of prohibited behavior by a commercial driver must immediately remove the commercial driver from duty and notify the DER.
- (2) "Actual knowledge" means:
 - (A) direct observation of alcohol or controlled substance use;
 - (B) notification of a driver's receipt of a traffic citation for driving a CMV while under the influence of alcohol or controlled substances;
 - (C) a driver's admission of alcohol or controlled substance use; or
 - (D) notification of a verified confirmed positive alcohol/drug test result.
- (3) If a supervisor has reason to believe that a driver is experiencing a medical or physical problem that has the potential to interfere with the driver's ability to perform normal tasks associated with operating a CMV, the supervisor must immediately contact the DER and must not allow the driver to operate a CMV for the agency.

(h) **Medical Examiner's Certification for Commercial Drivers.**

- (1) A commercial driver must pass a DOT physical examination to obtain or renew a medical examiner's certificate. The certificate expires every two years or less.
- (2) The DER will maintain a database that includes the date each TJJJ commercial driver's medical certificate expires. If a driver's certificate expires and he/she has not taken the required physical examination, the DER must immediately notify the driver's supervisor that the driver is not to be allowed to drive a CMV until a new medical examiner's certificate has been provided.
- (3) Commercial drivers and applicants may have the physical examination performed by a TJJJ contract medical provider or a private medical examiner.
 - (A) If the employee or applicant uses a TJJJ contract medical provider, TJJJ will pay for the examination. For current employees, the time for the medical examination and travel time to and from provider's office will be considered as time worked.
 - (B) If the employee or applicant uses a private medical examiner, TJJJ will not pay for the exam. An employee may not report the time required for an examination by a private medical examiner or related travel time as time worked. However, the employee may use any accrued leave other than sick leave for this purpose.
- (4) If the medical examiner's certificate is renewed, the commercial driver should ensure that a copy of the certificate is provided to his/her supervisor. The Medical Examination Report does not need to be provided to the to the driver's supervisor. Within three workdays after receiving a copy of the renewed medical examiner's certificate, the supervisor must:

- (A) fax a copy of the certificate to the DER; and
 - (B) provide the copy of the renewed certificate to the driver's local Human Resources Administrator (HRA) for placement in the driver's primary personnel file.
- (5) If a commercial driver fails the physical examination, the driver must provide a copy of the Medical Examination Report to the driver's supervisor. Upon receipt of the Medical Examination Report the supervisor must:
- (A) immediately fax a copy to the DER;
 - (B) provide the Medical Examination Report to the local HRA for placement in the employee's confidential personnel file; and
 - (C) keep all medical information confidential and share such information only on a need-to-know basis.
- (6) An employee who fails a DOT physical examination will no longer be allowed to operate a CMV for the agency, even if the employee's current medical examiner's certificate has not expired. The employee may also be subject to administrative separation if driving a CMV is an essential function of the employee's current position, or if the medical information provided indicates that the employee cannot perform any other essential job duty, with or without reasonable accommodations of disabilities.

(i) **Commercial Drivers' Alcohol/Drug Testing Program.**

(1) **General Provisions.**

- (A) When commercial drivers abuse alcohol or drugs, they risk their own life and the lives of TJJJ youth, other TJJJ employees, and the public.
 - (i) Commercial drivers who are in need of professional help are encouraged to voluntarily notify their supervisors before their job performance is adversely affected. TJJJ will assist the employee by identifying a substance abuse professional through the Employee Assistance Program. The substance abuse professional will evaluate the employee and determine appropriate education, treatment, and aftercare.
 - (ii) A commercial driver's admission of a violation of this policy will result in removal from duty involving safety-sensitive functions, and may result in administrative separation if driving a CMV is an essential function of the employee's position.
 - (iii) Self-reporting after being notified of a required test will not release a driver from his/her responsibility for taking the test.
- (B) All alcohol/drug tests required of applicants or employees will be performed by a TJJJ-contracted vendor pursuant to the test collection, analysis procedures, and standards for alcohol and controlled substance testing as set forth in 49 CFR, Parts 40 and 382.
- (C) Before each alcohol or controlled substance test under this policy, the supervisor (or hiring authority, for pre-employment testing) must provide the employee or applicant being tested a completed Commercial Driver Alcohol/Drug Testing Notification form, HR-605, indicating that the testing is required by Federal Motor Carrier Safety Administration regulations in 49 CFR Part 382.
- (D) Alcohol and drug test results are confidential and may not be released outside the agency without the employee's specific written consent, except in connection with legal or administrative proceedings relating to the information (e.g., lawsuit, unemployment compensation hearing, disciplinary or grievance process). All alcohol and drug test results obtained under this policy must be provided to the HRA for placement in the employee's confidential personnel file, and a copy is to be provided to the DER.

- (E) As required by state law (Texas Transportation Code, §644.252; 37 TAC §4.21), the DER will notify the Texas Department of Public Safety (DPS) in accordance with DPS guidelines whenever an applicant or a commercial driver has a positive alcohol test with an alcohol concentration of 0.04 or higher, has a verified confirmed positive drug test, refuses to test, or tampers with his/her urine specimen.

(2) **Procedures for Commercial Driver Applicants.**

The following procedures apply to internal and external applicants for commercial driver positions.

- (A) Job postings for commercial driver positions will include a notice that the position is subject to mandatory pre-employment drug testing.
- (B) The applicant must complete and submit the forms listed in (i) and (ii) below. The information in the forms may be used to contact previous employers to investigate the applicant's work history.
 - (i) A Commercial Driver Application Supplement form, HR-600, which must include the following information for a period of ten years preceding the application:
 - (I) a list of the names and addresses of the previous employers for which the applicant drove a CMV;
 - (II) the dates between which the applicant drove a CMV for each employer;
 - (III) the reason for leaving employment with each employer; and
 - (IV) each specific criminal offense or serious traffic violation of which the applicant has been convicted and each suspension, revocation, or cancellation of driving privileges that resulted from the conviction.
 - (ii) A separate Prior Testing History Release of Information form, HR-601, for each DOT-regulated employer (other than TJJD) for whom the applicant drove a CMV within the past two years. The HR-601 form authorizes the previous employer(s) to disclose:
 - (I) any alcohol tests with a result of .04 alcohol concentration or higher;
 - (II) verified confirmed positive drug tests;
 - (III) refusals to be tested (including verified adulterated or substituted drug test results);
 - (IV) other violations of DOT agency drug and alcohol testing regulations; and
 - (V) with respect to any applicant who violated a DOT drug and alcohol regulation, documentation of successful completion of DOT return-to-duty requirements (including follow-up tests).
- (C) During the interview process, the hiring authority will:
 - (i) provide each interviewed applicant with a copy of this policy and PRS.02.17;
 - (ii) advise the applicant that he/she will be required to pass a pre-employment drug test if selected for hire;
 - (iii) ask the applicant whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the applicant applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years.

- (D) If the applicant admits that he/she had a positive test or a refusal to test, or if information received on the HR-601 from a previous employer indicates such actions, the applicant will not be considered for employment in a position requiring operation of a CMV until and unless the applicant provides documentation of successful completion of the appropriate return-to-duty process.
 - (E) If a previous employer indicates that the applicant has violated a DOT drug and alcohol testing requirement but is unable to provide information about successful completion of DOT return-to-duty requirements (including follow-up tests), this information is to be sought from the applicant by the HRA, in consultation with the DER. If return-to-duty requirements have not been successfully completed, the applicant may not be allowed to perform safety-sensitive functions until these requirements have been completed.
 - (F) If hired, the applicant will not be allowed to perform any safety-sensitive functions until the applicant returns the HR-601 form(s). The process of obtaining the required information from previous employers via the HR-601 is to be completed, if feasible, before the applicant is allowed to perform safety-sensitive functions.
 - (i) If not feasible despite good-faith efforts, the process of obtaining the required information must be completed as soon as possible.
 - (ii) The applicant may be allowed to perform safety-sensitive functions while information from previous employers is obtained. However, the applicant may not continue performing safety-sensitive functions for more than 30 days unless a good faith effort to obtain the required information has been made and documented.
 - (G) Upon acceptance of a conditional offer of employment, an applicant will be provided a completed HR-605 form and required to submit to a pre-employment drug test. The pre-employment drug test should be scheduled to occur within 48 hours after the conditional offer is made. If the selected applicant accepts a conditional offer of employment and fails to have a negative drug test result, the applicant:
 - (i) will not be considered for any TJJJ position for one year following the test date;
 - (ii) will be subject to discharge if currently employed by TJJJ; and
 - (iii) will not be considered for future commercial driver positions unless and until the applicant has provided documentation of successful completion of DOT return-to-duty requirements (including follow-up tests).
- (3) **Alcohol and Drug Testing of Current Employees.**

As a condition of employment in a position for which a CDL is required, a TJJJ commercial driver is required to submit to random, reasonable suspicion, post-accident, return-to-duty, and follow-up alcohol and drug testing.

(A) **Transportation to Testing Site.**

A commercial driver may not drive to or from the collection site for reasonable suspicion or post-accident testing. Transportation to the collection site and to the employee's home (or other suitable lodging) following the testing is to be provided or arranged by the employee's supervisor.

(B) **Time Reporting for Testing Occasions.**

An employee will report the testing and related travel time as time worked if:

- (i) the employee is a commercial driver submitting to an alcohol/drug test other than a return-to-duty or follow-up test; or
- (ii) the employee is transporting a commercial driver to a testing site for a reasonable suspicion or post-accident alcohol/drug test.

(C) Reasonable Suspicion Alcohol/Drug Testing.

A commercial driver must submit to a reasonable suspicion alcohol or drug test when a trained supervisor has reasonable suspicion to believe that the driver is under the influence of alcohol or drugs while on duty, or has otherwise violated the provisions of this policy concerning alcohol or drug use.

- (i) Reasonable suspicion determinations under this policy must be:
 - (I) made only by a supervisor or agency official who has been trained in accordance with 49 CFR §382.603; and
 - (II) approved by the DER prior to the test.
- (ii) Reasonable suspicion testing must not be based on hunches, guesses, complaints from other persons, or phone tips. Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech or body odors. The observations may include indications of the withdrawal effects from the chronic use of controlled substances.
- (iii) Reasonable suspicion testing for alcohol use in violation of this policy may only be required on the basis of observations made during, just preceding, or just after the performance of safety-sensitive functions.
- (iv) A trained supervisor who concludes that a driver's appearance, behavior, speech or body odors rise to reasonable suspicion of alcohol or drug use in violation of this policy must immediately:
 - (I) confront the driver;
 - (II) keep the driver under direct observation;
 - (III) contact the DER to discuss the specific observations upon which the conclusion is based, and obtain the DER's verbal or written approval to go forward with reasonable suspicion testing;
 - (IV) document the specific observations on the Reasonable Suspicion Alcohol/Drug Testing Decision Form for Commercial Drivers, HR-602, as soon as possible; and
 - (V) submit the original HR-602 form to the DER with a copy to the local HRA for maintenance in the employee's confidential personnel file (even if testing is not performed).
- (v) Reasonable suspicion testing must correspond to the specific nature of the suspicion. For example, reasonable suspicion of alcohol misuse does not justify drug testing. However, in some instances, a driver's appearance, behavior, speech or body odor may result in reasonable suspicion of both alcohol and drugs, in which case both types of testing may be required.
- (vi) If the DER agrees that the observations warrant reasonable suspicion testing:
 - (I) the driver is to be immediately informed, via a completed HR-605 form, that alcohol or drug testing (or both) is being required, and that refusal will result in

disqualification from performing any safety-sensitive functions and appropriate discipline up to and including termination; and

- (II) the driver is to be transported as described in (i)(3)(A); and
 - (III) under no circumstances may the driver be allowed to resume safety-sensitive functions until a negative test result is provided.
- (vii) If an alcohol test is not administered within two hours following the DER's verbal or written authorization to test, the supervisor must submit to the DER a record stating why the test was not promptly administered.
- (viii) If an alcohol test is not administered within eight hours following the DER's verbal or written authorization to test, all attempts to administer the alcohol test must cease. The supervisor must submit to the DER a record stating the reasons why the test was not administered.

(D) Post-Accident Testing.

(i) Reasons for Post-Accident Testing.

A post-accident alcohol and drug test will be administered to any commercial driver who is involved in an accident resulting in:

- (I) loss of human life; or
- (II) the commercial driver's receipt of a citation for a moving traffic violation arising from the accident, if the accident involved:
 - (-a-) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (-b-) disabling damage to a vehicle requiring the vehicle to be towed from the scene.

(ii) Supervisor's Responsibilities.

Upon notification that an accident involving a CMV has occurred, the supervisor must:

- (I) immediately contact the DER by phone;
- (II) document when he/she spoke with the DER;
- (III) complete the Post-Accident Alcohol/Drug Testing Decision Form for Commercial Drivers, HR-603, as soon as possible after contacting the DER; and
- (IV) if testing is required, provide the employee a completed HR-605 form and arrange for the employee to be transported to and from the testing facility.

(iii) Timeframes for Conducting Post-Accident Alcohol/Drug Tests.

(I) Alcohol Tests.

A post-accident alcohol test should be administered as soon as practicable following the accident.

- (-a-) If the test is not administered within two hours after the accident, the DER must prepare and maintain a record stating the reasons the test was not promptly administered.

(-b-) If a post-accident alcohol test is not administered within eight hours following the accident, attempts to administer the alcohol test must cease. The DER must prepare and maintain a record stating why the test was not conducted. The record will be submitted to the FMCSA upon request.

(II) **Drug Tests.**

(-a-) Post-accident drug testing should be administered as soon as practicable following the accident.

(-b-) If the test is not administered within 32 hours following the accident, attempts to administer the drug test must cease. The DER must prepare and maintain a record stating the reasons the test was not promptly administered. The record will be submitted to the FMCSA upon request.

(iv) **Duty Status Pending Drug Test Results.**

If a commercial driver is administered a post-accident alcohol and drug test, the driver will not be removed from duty pending the test results unless the testing is also based on reasonable suspicion of alcohol or drug use. The mere fact that there has been an accident is not a sufficient basis for reasonable suspicion testing.

(v) **Tests Conducted by Independent Authorities.**

The results of post-accident alcohol or drug testing conducted by federal, state, or local officials with independent authority for the test(s) (e.g., a test conducted by a law enforcement officer) will be considered to meet the post-accident testing requirements of this policy if:

- (I) the testing conforms to the applicable federal, state, or local alcohol or drug testing requirements; and
- (II) the results of the testing are provided to TJJJD by the federal, state, or local authority.

(E) **Random Testing.**

- (i) The DER is responsible for ensuring the following:
 - (I) the minimum annual percentage rate for random alcohol testing is 10% of the average number of commercial driver positions;
 - (II) the minimum annual percentage rate for random drug testing is 50% of the average number of commercial driver positions;
 - (III) the selection of drivers for random alcohol and drug testing is made by a scientifically valid method;
 - (IV) each commercial driver selected for random testing under the selection process used has an equal chance of being tested each time selections are made;
 - (V) each driver selected for testing is tested during the selection period;
 - (VI) random alcohol and drug tests are unannounced;
 - (VII) the dates for random testing are reasonably spread throughout a calendar year; and

- (VIII) a driver is only randomly 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.
- (ii) When a commercial driver is notified that he/she has been selected for random testing, the driver is to be provided a completed HR-605 form and must:
 - (I) immediately go to the testing site; or
 - (II) if the driver is currently performing a safety-sensitive function from which the driver cannot be relieved, go to the testing site as soon as possible after ceasing to perform the safety-sensitive function.

(F) Return-to-Duty Alcohol/Drug Testing.

In addition to facing disciplinary consequences, a commercial driver who tests positive, refuses a test, or uses alcohol or drugs in violation of this policy will be referred to an SAP and will not be permitted to work in a safety-sensitive function until he/she completes any requirements imposed by the SAP.

- (i) The driver will be immediately removed from performing any safety-sensitive function.
- (ii) The DER will refer the employee to an SAP for a mandatory evaluation. The SAP will recommend appropriate education, treatment, and aftercare.
- (iii) If the commercial driver is still employed by the agency, the DER will provide the driver a completed HR-605 form and schedule a return-to-duty alcohol and/or drug test when notified that the SAP is preparing a return-to-duty letter. The test will be at the driver's own expense as a condition of returning to duty.
 - (I) A driver who is subject to a return-to-duty alcohol test is required to have an alcohol test result with an alcohol concentration of less than 0.02.
 - (II) If the driver is subject to a return-to-duty drug test, the driver must have a negative drug test result.
- (iv) Once the DER receives the return-to-duty test results and determines that the driver is eligible to return to work, the DER will notify the local HRA that the employee is eligible to return to work and fax the return-to-duty letter to the HRA. The local HRA will:
 - (I) provide the employee with the faxed return-to-duty letter; and
 - (II) maintain a copy of the return-to-duty letter only if the employee is required to successfully complete recommended out-patient or aftercare treatment after returning to duty. Upon notification by the DER that the employee has successfully completed the substance abuse treatment program, the local HRA will shred the copy of the return-to-duty letter.

(G) Follow-Up Alcohol/Drug Testing.

- (i) A commercial driver who is required to pass a return-to-duty test will also be subject to unannounced follow-up alcohol and/or drug testing as required by the SAP. A completed HR-605 form is to be provided to the driver prior to each test.
 - (I) Follow-up alcohol/drug tests will be conducted at the driver's own expense.
 - (II) At a minimum, the SAP will require at least six follow-up tests to be conducted in the first 12 months following the driver's return to duty. Other required testing,

such as random testing, may not be counted toward the follow-up testing requirements.

- (III) The SAP will determine the remaining number of tests to be conducted for a period of up to 60 months following the driver's return to duty.
- (ii) Supervisors are prohibited from disclosing follow-up alcohol/drug testing dates to a commercial driver prior to the day of the test.

(4) Failure to Have a Negative Test Result.

Failure to have a negative alcohol or drug test result may be due to a refusal to test, specimen tampering, or a verified confirmed positive alcohol or drug test result.

(A) Refusal to Test.

An applicant or commercial driver will be considered as refusing to test if he/she:

- (i) fails to arrive at the collection site on time (except for a pre-employment test);
- (ii) fails to remain at the test facility until the testing process is complete (except for an applicant who leaves the testing site before the testing process commences);
- (iii) fails to provide a urine specimen;
- (iv) in the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the applicant's/driver's provision of a specimen;
- (v) fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- (vi) fails or declines to take an additional drug test the collector has directed the applicant/driver to take;
- (vii) fails to undergo a medical examination or evaluation as directed by the Medical Review Officer (MRO) or DER;
- (viii) fails to cooperate with any part of the collection process (e.g., refuses to empty pockets when directed by the collector, behaves in a confrontational way that disrupts the collection process) or fails to follow the observer's instructions;
- (ix) possesses or wears a prosthetic or other device that could be used to interfere with the collection process;
- (x) admits to having adulterated or substituted the urine specimen; or
- (xi) is reported by the MRO as having a verified adulterated or substituted test result.

(B) Specimen Tampering.

The collector will determine whether there is evidence of specimen tampering and will immediately notify the DER of any evidence.

(C) Inability to Provide an Adequate Amount of Breath or Urine.

- (i) **Drug Tests.**

- (I) If an applicant/commercial driver is unable to provide at least 45 milliliters of urine, the applicant/driver will be required to remain in the testing area under supervision for up to three hours or until the time limit for testing expires, whichever is less. The applicant will be directed to drink up to 40 ounces of fluid and then attempt to provide an adequate urine specimen. If the applicant/driver is still unable to provide an adequate specimen, testing will be discontinued.
 - (II) If the applicant/driver refuses to make the attempt or attempts but fails to provide an adequate amount of urine, the collector will immediately inform the DER and MRO.
 - (III) After consultation with the MRO, the DER will direct the applicant or commercial driver to obtain a medical examination within five days after being notified by the DER of the need for a medical examination.
 - (IV) The medical examination must be performed by a physician with expertise in the medical issues given by the applicant/driver for being unable to provide a sufficient test specimen. The physician conducting the medical examination must be acceptable to the MRO. The MRO may serve as the examining physician if the MRO has the required expertise.
 - (V) The physician will report the results of the evaluation to the MRO, and the MRO must then follow the procedures in 49 CFR §40.193 (and 49 CFR §40.195, where applicable). At the end of the process, the MRO will report the result to the DER, who will then direct appropriate action on the basis of the results.
- (ii) **Alcohol Tests.**
- (I) If a commercial driver is unable to provide an adequate amount of breath after several attempts, the testing will be stopped. The driver will be instructed to take a medical evaluation to determine if there is an acceptable medical reason for not providing a sample.
 - (II) If the driver refuses to make the attempt or attempts but fails to provide an adequate amount of breath, the breath alcohol technician (BAT) will immediately inform the DER. Refusal to make the attempt will be regarded as a refusal to test. If the driver has attempted but failed to provide an adequate amount of breath for testing, the DER will then follow the procedure for requiring a medical examination pursuant to 49 CFR §40.265.
 - (III) If the physician determines that a medical condition has, or with a high degree of probability could have, prevented the driver from providing an adequate breath sample, the test is cancelled.
 - (IV) If the physician determines that there is no legitimate medical explanation for the failure to provide an adequate breath sample, the failure to provide an adequate breath sample is treated as a refusal to test.

(5) **Alcohol/Drug Testing Processes.**

Upon arrival at the collection site, the applicant or commercial driver will be required to provide photo identification or be identified by the DER. The applicant or driver may request the individual conducting the test to provide identification to the applicant or driver.

(A) **Alcohol Test.**

All breath tests are conducted by a Screening Test Technician (STT) or a BAT. The tests will be conducted in a manner to ensure the validity of the testing as well as provide confidentiality of the test results.

- (i) At the start of the test, an STT or a BAT, using only a DOT-approved device, will:
 - (I) establish a private testing area to prevent unauthorized people from hearing or seeing the test result;
 - (II) require the driver to sign the Alcohol Testing Form (ATF); and
 - (III) perform a screening test and show the driver the test result.
- (ii) If the result is an alcohol concentration of less than 0.02, no further testing is authorized. The technician will document the result on the ATF, and provide the driver and DER a copy.
- (iii) If the screening test result is 0.02 or greater, the driver will be required to take a confirmation test, which can only be administered by a BAT using an Evidential Breath Testing device. The BAT will:
 - (I) wait at least 15 minutes, but not more than 30 minutes, before conducting the confirmation test (during this time the driver will be instructed by the BAT not to eat, drink, smoke, belch, put anything in his/her mouth or leave the testing area);
 - (II) perform an "air blank" (which must read 0.00) on the testing device to ensure that there is no residual alcohol in the device or in the air around it;
 - (III) perform a confirmation test using a new mouthpiece;
 - (IV) display the test result to the driver on the testing device and on the printout from the EBT;
 - (V) document the confirmation test result on the ATF, and provide a copy to the driver and the DER; and
 - (VI) report any result of 0.02 or greater immediately to the DER.

(B) Drug Test.

Drug tests will screen for marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

- (i) During the collection process, a urine specimen collector will create a secure collection site by:
 - (I) restricting access to the site to only those being tested;
 - (II) securing all water sources and placing blue dye in any standing water;
 - (III) removing or securing all cleaning products/fluids at the collection site;
 - (IV) affording the applicant/driver privacy to provide a urine specimen, unless he/she is required to submit a urine specimen under direct observation as described in paragraph (ii) below;
 - (V) asking the applicant/driver to remove any unnecessary garments and empty his/her pockets (with the exception of his/her wallet);
 - (VI) instructing the applicant/driver to wash and dry his/her hands;
 - (VII) selecting or having the applicant/driver select a sealed collection kit, and opening the kit in his/her presence;

- (VIII) requesting the applicant/driver to provide a specimen of his/her urine into a collection container;
 - (IX) checking the temperature and color of the urine;
 - (X) pouring the urine into two separate bottles in the applicant's/driver's presence, sealing them with tamper-evident tape, and then asking the applicant/driver to sign the seals after they have been placed on the bottles; and
 - (XI) asking the applicant/driver to complete and initial or sign the Federal Drug Testing Custody and Control Form provided by the collector, which will include daytime and evening phone numbers so the MRO may contact the applicant/driver if there are any questions about the test.
- (ii) The applicant/driver will be allowed to produce the urine specimen in private, unless the specimen must be collected under direct observation of a same-gender observer because one of the following occurs:
- (I) the driver is being required to submit to a return-to-duty or follow-up test;
 - (II) the collector determines that the observes the applicant/driver has brought materials to the collection site that could be used to tamper with a urine specimen with the intent to alter the specimen;
 - (III) the conduct of the applicant/driver clearly indicates an attempt to tamper with the specimen;
 - (IV) the collector determines that the first provided urine specimen is outside the normal temperature range (32°-38°C/90°-100°F); or
 - (V) the collector's inspection of the first provided specimen indicates that the applicant/driver apparently tampered with the specimen (unusual color or odor, presence of foreign objects or material, or other signs of tampering).

(C) MRO Review of Drug Test Results.

- (i) Prior to notifying the DER that a drug test has been verified as positive or as a refusal to test because of adulteration or substitution, the MRO will attempt to contact the applicant or commercial driver to determine if there is a legitimate medical reason for the result.
- (ii) In the following circumstances, the MRO may advise the DER of a verified confirmed positive drug test result without communicating directly with the applicant/driver regarding the test results:
 - (I) the applicant/driver expressly declines the opportunity to discuss the test results with the MRO;
 - (II) the DER has successfully made and documented a contact with the applicant/driver (i.e., actually talked to him/her) and instructed him/her to contact the MRO and more than 72 hours have passed since the time the DER contacted the applicant/driver; or
 - (III) neither the MRO nor the DER, after making and documenting all reasonable efforts, has been able to contact the applicant/within 10 days after the date on which the MRO received the confirmed test result.
- (iii) If the MRO has verified a drug test as positive without communicating directly with the applicant/driver, the applicant/driver has 60 days from the date of verification in which to present information to the MRO documenting any circumstances that unavoidably

prevented the applicant/driver from contacting the MRO or DER in the time provided. On the basis of such information, the MRO may re-open the verification and allow the applicant/driver to present information concerning whether there is a legitimate medical explanation of the confirmed test result. If the MRO determines there is a legitimate medical explanation for the presence of drugs, the MRO will report the test result to the DER as negative.

(D) Requesting a Re-test.

- (i) If an applicant or commercial driver has a verified confirmed positive drug test and/or refusal to test because of adulteration or substitution, he/she may request a re-test of the specimen. The applicant/driver has 72 hours from the time he/she was notified of the test result to request the re-test. The request may be verbal or in writing and must be made to the MRO.
- (ii) If the applicant/driver has not requested a re-test within 72 hours of the notification, he/she may present information to the MRO documenting any circumstances that unavoidably prevented the applicant/driver from making a timely request.
- (iii) The applicant/driver is responsible for paying the cost of the re-test. The DER will request the applicant/driver to submit a certified check or money order to the DER within 24 hours of contact by the MRO. The laboratory will retest the original specimen in a timely manner even if the applicant/commercial driver does not remit the payment as requested.
- (iv) The MRO will request in writing that the laboratory send the secondary specimen to a different certified laboratory for testing.

(6) Education and Training.

The education and training programs referenced in this section will be provided through the agency's Employee Assistance Program (EAP).

(A) Commercial Driver Education.

A commercial driver must participate in a commercial driver education program within the first 30 days of employment as a commercial driver.

- (i) The program will include training regarding:
 - (I) the effects and consequences of alcohol and drug use on personal health, safety, and work environment;
 - (II) indicators of alcohol abuse and drug use;
 - (III) the TJJJD alcohol and drug testing program; and
 - (IV) the availability of the agency's Employee Assistance Program (EAP).
- (ii) Upon completion of the commercial driver education program, the driver will be required to sign a Commercial Driver Certification of Receipt - Alcohol and Drug Testing Information form, HR-604, acknowledging receipt of this information. The original signed form will be maintained by the primary DER, and a copy will be provided to the local HRA for maintenance in the commercial driver's personnel file.

(B) Supervisory Training.

- (i) A supervisor of a commercial driver must complete at least 60 minutes of training on alcohol misuse and at least an additional 60 minutes of training on controlled substances use. Recurrent training is not required.
- (ii) The training will be used by supervisors to determine whether reasonable suspicion exists to require a driver to undergo reasonable suspicion alcohol/drug testing. The training will also include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.
- (iii) If the supervisor is also a commercial driver who has not previously participated in the commercial driver education program, the supervisor must participate in the commercial driver education program within 30 days of employment in the supervisory position.

(j) **Record Retention.**

Records regarding the agency's alcohol misuse and controlled substance use prevention program will be kept in a secure location with controlled access. Records are to be retained in accordance with the retention schedules in 49 CFR §382.401 and the TJJJ record retention schedule.
