

DRUG AND ALCOHOL TESTING PROGRAM PROCEDURES  
for FMCSA-Covered Employees of the  
UNIVERSITY OF MINNESOTA

January 2022

ACKNOWLEDGEMENT OF RECEIPT

**THIS POLICY IS NOT AN EMPLOYMENT CONTRACT OR AN OFFER OF AN EMPLOYMENT CONTRACT.**

OF  
DRUG AND ALCOHOL POLICY AND TESTING PROGRAM  
For  
UNIVERSITY OF MINNESOTA

I acknowledge that I have received a copy of the Drug and Alcohol Policy for the University of Minnesota.

I understand that it is my responsibility to read the policy in its entirety.

I understand that as an employee of the University of Minnesota, I am required to abide by the rules and regulations established by this policy, and that I may be subject to disciplinary action if I violate the policy.

I understand that the policy may change from time to time to comply with federal and state laws, and that I will be notified electronically of those changes. I also understand that I may obtain a current copy of the policy from University Health and Safety—Biosafety and Occupational Health Department, and on the University Health and Safety website. The most current version of this program is an appendix to <http://policy.umn.edu/finance/vehicles>.

The program itself is at: <https://bohd.umn.edu/dot-drug-and-alcohol-program>

I understand that should I have any questions about this policy, or need assistance or resources related to alcohol and/or drug-related issues or problems, my supervisor, Human Resources, the Employee Assistance Program, and the Disability Resource Center are available to discuss those questions and concerns.

\_\_\_\_\_  
Name of Employee (Print name)

\_\_\_\_\_  
Employee's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Supervisor

As a DOT-covered employee, I operate the following Commercial Motor Vehicle(s) for the University:

- (A Class 7 or 8 CMV, GVWR of 26,001 or more pounds, or a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a GVWR of more than 10,000 pounds;
- (A vehicle designed to transport 16 or more persons, including the driver; and/or
- (A vehicle of any size that transports hazardous materials, which require the vehicle to be placarded under the Hazardous Material Regulations

*Instructions:* The original of this acknowledgement must be retained in the employee's file in compliance with DOT regulations. A photocopy may be given to the employee, if requested.

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**DRUG AND ALCOHOL PROGRAM**  
**for FMCSA-covered employees of the**  
**UNIVERSITY OF MINNESOTA**

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## **I. PURPOSE**

The University of Minnesota (“the University”) has established this alcohol and controlled substances testing program for those employees who are drivers of the University’s Commercial Motor Vehicles (CMVs) and who require Commercial Drivers Licenses (CDLs), to meet requirements of the Federal Motor Carrier Safety Administration (FMCSA) and the U.S. Department of Transportation (DOT). The overall goals of this testing program are to ensure a safe and drug-free transportation environment, to reduce the potential for accidents and casualties involving University-owned /-leased vehicles, and to cooperate with the U.S. Department of Transportation and the transportation industry in efforts to eliminate the misuse of alcohol and the illegal use of controlled substances by University drivers.

With these objectives in mind, the following program and procedures have been established for FMCSA-covered employees. Full compliance with the Drug Free University Policy and this DOT Drug and Alcohol Testing Program is a condition of employment with the University of Minnesota.

## **II. SCOPE**

This Drug and Alcohol Program for FMCSA-Covered Employees applies to:

- full-time and part-time employees who are “covered drivers” as defined in Section VI [A].
- applicants for positions that require Commercial Drivers Licenses (CDL) for the operating of Commercial Motor Vehicles as described in Section VI [A].
- independent owner/operators who are specifically named in a contract to provide service to the University of Minnesota
- holders of a commercial learner’s permit

## **III. PROGRAM**

A driver who violates the FMCSA prohibitions of this program (Section VI[B]) must be immediately removed from all FMCSA safety-sensitive functions (as defined in Section XIII), including driving. Under the University’s independent authority, the driver may also be subject to disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

The University also reserves the right to take action against an employee, where appropriate, for violation of other general University policies, procedures and/or rules, defined in rules that are separate from this program.

## **IV. RULES OF CONDUCT**

- A. A covered driver may not engage in any of the conduct(s) prohibited in Section VI [B].
- B. An employee/driver who refuses to submit to required testing (see definition of *refusal* under Section XIII), under the University’s independent authority, will be considered to have voluntarily resigned.
- C. Under independent authority as established by the Drug Free University Policy, the University prohibits the possession of alcohol, or the sale, purchase, manufacture, possession or transfer of an illegal drug, or being under the influence of alcohol or of an illegal drug during all work time, including meals and breaks; while on University property; while on University business at a job site, shipper/receiver site, truck stop, or rest area; or at any time while in a University-owned /-leased vehicle.
- D. Under independent authority, the University prohibits the use of any over-the-counter medication by a driver during working time if such use may detrimentally affect or endanger the safety of coworkers, customers or members of the public, or the driver’s job performance, or the safe or efficient operation of the University, or its property.
- E. A driver who uses prescribed medication(s) for a controlled substance will not be permitted or required to operate a Commercial Motor Vehicle until and unless the primary Designated

Employer Representative (DER) is provided with appropriate authorization from the prescribing licensed medical professional. [See explanation in Section V, Authorized Use of Controlled Substances.]

- F. Cases of suspected trafficking, possession or use of illegal substances or drug paraphernalia on University property, in or on University vehicles, will, under independent authority, be subject to disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.
- G. The University encourages drivers who wish to voluntarily seek assistance for questions or problems related to drugs and alcohol to contact the University's Employee Assistance Program (EAP). FMCSA-covered drivers who seek assistance under the provisions of the Self-Identification Policy (Section X) will be removed from safety-sensitive functions during the time of assessment and rehabilitation, but their admission of use will not be considered a FMCSA violation. In accordance with the policy, drivers who return to work after rehabilitation under the provisions of the Self-Identification Policy will be subject to non-DOT follow-up testing, for no more than 2 years.
- H. If a driver is concerned about suspected drug and alcohol use by a coworker at work, or of drug trafficking, or of safety or job performance as it relates to another driver's suspected drug and alcohol use, including that of managers and supervisors, such concern may be reported confidentially to the secondary DER.

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

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

The University requires a driver to make such notification as soon as possible, and prior to performing a safety-sensitive function, and to provide a completed Authorization To Operate A Commercial Motor Vehicle While Using A Controlled Substance form as written documentation from the prescribing licensed medical practitioner that the medication(s) will not affect the driver's ability to safely operate a commercial motor vehicle. The University reserves the right to obtain an independent medical opinion regarding the potential effects of a prescription or over-the-counter drug on a driver's ability to perform safety-sensitive functions or other aspects of his/her job. Further, the University reserves the right to place any driver taking medication(s) on non-safety-sensitive duty, when possible, pending a decision as to whether the driver may continue to perform his/her regular job duties while taking the medication(s).

The University may, as it determines necessary, and when possible, temporarily reassign the driver to non-safety-sensitive functions for the duration of his/her use of such drug(s). However, due to the safety-sensitive nature of most of the jobs that involve driving CMVs, the University can make no guarantee that these accommodations can always be made.

## **VI. TESTING FOR CONTROLLED SUBSTANCES AND ALCOHOL**

University Health and Safety—Biosafety and Occupational Health Department (BOHD) will oversee controlled substance and alcohol testing of driver/applicants and driver/employees (including mechanics with CDLs and management personnel with CDLs) in compliance with regulations established by the U.S. Department of Transportation (DOT), 49 CFR Part 40 and the Federal Motor Carrier Safety Administration (FMCSA), 49 CFR Part 382.

### **A. COVERED DRIVERS**

In accordance with U.S. Department of Transportation FMCSA Regulations, drivers subject to drug and alcohol testing are those employees of the University, including drivers who are employed by the University's agricultural/farm operations, Research and Outreach Centers, Landscape Arboretum, and others who are required to hold a Commercial Driver's License (CDL) and who operate a commercial motor vehicle (CMV), when that vehicle meets the following:

- a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- a gross vehicle weight rating of 26,001 or more pounds; or
- designed to transport 16 or more persons including a driver; or
- *a vehicle of any size* that transports materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103[b]) and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations (40 CFR Part 172, Subpart F).

B. FMCSA PROHIBITED CONDUCT:

A driver shall not:

- Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. (49 CFR Part 382.201)
- Use alcohol, including medications containing alcohol, while performing safety-sensitive functions. (On-duty use is the basis for a violation of "actual knowledge" and must be documented and recorded on FMCSA's Clearinghouse. 49 CFR Part 382.205)
- Perform safety-sensitive functions within four (4) hours after using alcohol, including the use of medications that contain alcohol. (Pre-duty use is the basis for a violation of "actual knowledge" and must be documented and recorded on FMCSA's Clearinghouse. 49 CFR Part 382.207)
- Use alcohol for eight (8) hours following an accident, or until the driver has undergone a post-accident test, whichever occurs first. (Use of alcohol prior to a post-accident alcohol test is the basis for a violation of "actual knowledge" and must be documented and recorded on FMCSA's Clearinghouse. 49 CFR Part 382.209)
- Refuse to submit to a pre-employment/pre-placement, post-accident, random, reasonable suspicion, return to duty or follow-up alcohol or drug test. (49 CFR Part 382.211)
- Report for duty or remain on duty requiring the performance of safety-sensitive functions when he/she uses any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1803, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance does not adversely affect the driver's ability to operate a commercial motor vehicle safely. (Admission of use is the basis for a violation of "actual knowledge" and must be documented and recorded on FMCSA's Clearinghouse. 49 CFR Part 382.213)
- Report for duty, remain on duty, or perform safety-sensitive functions if he/she tests positive for controlled substances. (49 CFR Part 382.215)
- A driver who receives a citation for operating a Commercial Motor Vehicle while on duty, and while under the influence of drugs or alcohol, will have a violation. The driver will be removed from safety-sensitive functions, and the DER will enter the violation as "actual knowledge" on the Clearinghouse. Even if the charges are dropped, the driver still has a violation, and will be required to complete a SAP return-to-duty process before he/she can be considered for returning to safety-sensitive functions.

If a driver engages in any of the conduct(s) prohibited in (B) above, the driver is not qualified, under FMCSA regulations, to drive a commercial motor vehicle. He/she shall be immediately removed from all safety-sensitive functions (See definition: *safety-sensitive* in Section XIII) including driving, and under the University's independent authority may be subject to disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

Under FMCSA regulations, a driver who is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, may not operate or continue to operate a commercial motor vehicle or perform other safety-sensitive functions (See definition: *safety-sensitive*) for a twenty-four (24) hour period. Such driver will, under the University's independent authority, be placed on unpaid leave.

Under independent authority, a driver whose alcohol test result is greater than 0.02 but below 0.04 on a third incident will be required to submit to an evaluation by the University's contracted service provider, to release the results of that assessment to the University, and to follow completely the recommendations made by that contracted service provider. A driver who fails to follow these requirements will be subject to disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines under the University's independent authority. A driver who returns to work after successfully completing recommended rehabilitation is subject to a required DOT return-to-duty test.

A driver who violates the requirements of 49 CFR Part 382 or the requirements of 49 CFR Part 40 is subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b).

### C. REQUIRED TESTING

As provided in FMCSA rules and regulations, a driver or applicant who is required, under federal law, to possess a CDL in order to operate a CMV shall be subject to pre-employment/pre-placement testing for controlled substances, and random, reasonable suspicion, post-accident, return-to-duty, and follow-up testing for alcohol and controlled substances.

#### 1. **Pre-employment / Pre-placement Testing**

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

Each applicant will be asked whether he/she has tested positive, or refused to be tested, on a DOT pre-employment drug or alcohol test for any DOT employer during the previous two (2) years. An applicant who has previously tested positive, or refused to be tested, will not be considered for employment until or unless he/she successfully completes DOT's return to duty process. (See Section VIII, Consequences of Prohibited Conduct).

If the applicant is a new hire, the testing must be completed, and a negative test result must be received, before the driver will be permitted to perform safety-sensitive functions. If the pre-employment test result is positive, the job offer will be immediately withdrawn, and the applicant will be provided with names, addresses and phone numbers of qualified Substance Abuse Professionals. Costs related to SAP services and treatment recommendations will be the responsibility of the applicant. The applicant cannot be reconsidered unless and until he/she completes a SAP assessment and recommended assistance (Section VIII, Consequences of Prohibited Conduct).

An applicant who has previously refused to be tested or who provided a positive test result on a DOT pre-employment drug test for any other employer will be expected to report those test results at the time of application. Under the University's independent authority, failure to do so will constitute falsification of application information, and when discovered, will result in removal from consideration for employment. If the individual is already working when this is discovered, the driver will be immediately removed from safety-sensitive functions, and will be considered for return to safety-sensitive functions only after successfully completing a SAP assessment, the Substance Abuse Professional's recommendations, and providing a negative Return-to-Duty test.

If an applicant has recently successfully complied with a Substance Abuse Professional's recommendations as the result of a violation while working for a previous employer, the applicant's pre-employment test, if conducted as an observed collection, will be considered to also be a Return-to-Duty test. When significant time has lapsed since the Substance Abuse Professional's report of compliance, the University also reserves the right to require an additional, second follow-up evaluation to be conducted by a Substance Abuse Professional, designated by the University's contracted service provider, to verify that the applicant is currently free of drug use, prior to being hired.

An applicant is required to sign a form authorizing the primary DER to obtain from all previous employers (in the previous three [3] years) a report of all DOT violations, including positive test results and refusals to be tested. The primary DER will also



request copies of SAP reports related to any of these violations. An applicant with a violation cannot be hired until the primary DER has received a SAP's report of successful compliance, including a follow-up testing plan requirement.

If the applicant is a current employee who is promoted or transferred to a position or assignment that requires the driver to possess a CDL, a negative pre-employment/pre-placement drug test result must be received before the employee assumes the new position or assignment. If the test result is positive, the offer of promotion or transfer will be immediately withdrawn, and the employee will return to his/her previous position. If the employee intends to re-apply for a DOT-covered position, he/she must complete a SAP return-to-duty process, with a Substance Abuse Professional's report of compliance with the SAP's recommendation for treatment and education.

## 2. **Post-accident Testing**

As soon as possible following an accident involving a commercial motor vehicle on a public highway, (see definitions of *accident* and *disabling damage* in Section XIII)), the surviving FMCSA driver(s) involved in the accident must be tested for alcohol and controlled substances.

- a. A post-accident alcohol test, when required, must be administered as soon as possible, but within eight (8) hours following the accident.

If testing is required but is not conducted within two (2) hours, the reasons the test was not conducted must be documented. If testing is required but is not able to be conducted within the next six (6) hours, the reasons the test was not conducted must again be documented. After eight (8) hours, there will be no more attempts to conduct an alcohol test.

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

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

After a driver has submitted to a post-accident test, he/she will not be permitted to drive any University vehicles until negative results for alcohol and controlled substances tests have been confirmed.

Even if highway enforcement or other officials conduct a drug or alcohol test following an accident, drivers are still subject to DOT testing under these employer rules. In the event that Federal, state, or local officials conduct breath or blood tests for the use of alcohol and/or urine tests for the use of controlled substances following an accident, and a DOT test is required but is not able to be conducted, the tests conducted by law enforcement may meet the requirement of this section, provided those tests conform to applicable Federal, state, or local requirements. The University will request test results and other pertinent documentation from such agencies or law enforcement authorities and will require the driver to sign a release allowing the primary DER to obtain such information. Under the University's independent authority, refusal to sign such a release will be grounds for disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

In the event that a driver is so seriously injured that the driver cannot provide a sample of urine or breath at the time of the accident, the University requires that the driver provide necessary authorization for the primary DER to obtain hospital records or other documents that would indicate whether controlled substances or alcohol were present

(and the resulting levels) in the driver's body at the time of the accident. Under the University's independent authority, refusal to sign such a release will be grounds for disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

3. **Random Testing**

A percentage of drivers will be subject to random alcohol and drug testing each year. The percentage of drivers to be tested will be as determined annually by FMCSA and published in the Federal Register every January. Selections of drivers to be tested shall be done by a scientifically valid method that provides that each driver will have an equal chance of being selected each time that selections are made. Thus, a driver might be selected more than once during a year.

- a. Random tests will be unannounced; the dates for random selections will be spread throughout the year.
- b. A driver who is selected for random testing will be required to report to the collection site immediately upon notification. If the driver engages in conduct that does not lead to a collection as soon as possible after notification, such conduct may be considered as a refusal to submit to a test. The driver will be in a duty status (paid) from the time he/she leaves to go to the collection site until the time he/she returns from the collection site.
- c. A random test for alcohol shall be scheduled to occur only just prior to, during, or just after performing a safety-sensitive function, or at any time that the driver is in readiness to perform safety-sensitive function. Under independent authority, the University always considers all DOT-covered drivers to be in readiness when they are on duty. If on-call hours have been specified, the driver is in readiness for those on-call hours and for the four (4) hours prior.
- d. A random test for controlled substances can be scheduled at any time the driver is on duty and is not related to when the driver is performing safety-sensitive function.
- e. A driver who has been selected for random testing must be tested in that testing period. FMCSA regulations do not permit a replacement to be named if the selected driver is unavailable for testing.
- f. The primary DER will maintain participation in a qualified consortium for its random selection process.

4. **Reasonable Suspicion Testing**

The University shall require a driver to submit to drug and/or alcohol testing for reasonable suspicion when a supervisor has reason to believe that a driver has engaged in prohibited conduct (See Section VI[B], Prohibited Conduct), based on observation of the driver's appearance, behavior, speech, and/or body odor. Such driver conduct must be witnessed and documented by a supervisor or other University official who has been trained in compliance with FMCSA rules and regulations. Should a supervisor determine that a driver might have violated a prohibition of these regulations, the driver must submit to testing. Documentation is required for both drug and alcohol reasonable suspicion. Documentation for a drug test must be signed and submitted to the secondary DER within 24 hours, and for an alcohol test, prior to the alcohol test. Submission of the documentation to the secondary DER will not constitute a reason to delay such testing.

A driver who is represented by a bargaining unit and who is requested by a supervisor to submit to reasonable suspicion testing may request to have a union representative present, provided the driver signs a consent letter for the supervisor to notify the union representative of the request for testing. When the suspicion involves drugs only, the University will allow a maximum of one-half hour for the union representative to arrive and accompany the driver through the collection process. When the suspicion involves alcohol only, or alcohol and drugs, the union representative may be notified, but because

FMCSA requires alcohol testing to occur in a timely manner, the half-hour time allowance will not apply. If the union representative is not immediately available, he/she may have to arrange independent transportation to the collection site, as regulations do not allow for delay of the collection process.

Observation and testing for reasonable suspicion for controlled substances use can occur at any time the driver is on duty and is not related to when he/she performs safety-sensitive functions. A trained supervisor's determination will be based on a driver's appearance, behavior, speech and/or body odor, and on chronic and withdrawal effects of drug use. A driver who is suspected of controlled substances use must be immediately withdrawn from safety-sensitive functions and is required to undergo drug testing.

Observation and testing for reasonable suspicion for alcohol use can occur only just prior to, during, or just after the driver's performance of safety-sensitive function, or at any time that the driver is in readiness to perform safety-sensitive function. (The University considers all on-duty time to be in readiness). A trained supervisor's determination of suspected alcohol use will be based on a driver's appearance, behavior, speech and/or body odor. A driver who is suspected of alcohol misuse must be immediately withdrawn from safety-sensitive functions and cannot return unless an alcohol test has been conducted with an alcohol concentration that measures less than 0.02, or (if no test is conducted) twenty-four (24) hours have elapsed since the reasonable suspicion determination occurred.

An alcohol test for reasonable suspicion should be administered within the first two (2) hours, or within the next six (6) hours, but no more than eight (8) hours after the initial observation occurred

If alcohol testing is not conducted within two (2) hours, the reasons the test was not conducted must be documented. If alcohol testing then is not conducted within the next six (6) hours, the reasons the test was not conducted must again be documented. After eight (8) hours, there will be no more attempts to conduct an alcohol test. If no alcohol test is conducted at all, the driver cannot perform safety-sensitive functions until twenty-four (24) hours have elapsed following the original determination of reasonable suspicion of alcohol use. If this driver must return to safety-sensitive functions before 24 hours have passed, he/she may do so only after taking an alcohol test and receiving a test result below 0.02.

5. **Return-to-Duty Testing**

Under FMCSA regulations, before a driver can be considered for reinstatement after having engaged in prohibited conduct (Section VI, [B], Prohibited Conduct), the driver must provide a negative return-to-duty drug and/or alcohol test, depending on the substance(s) involved in the prohibited conduct. A Substance Abuse Professional may, however, order testing for both alcohol and controlled substances.

The University reserves the right to withhold a final decision regarding reinstatement of a driver until after a negative result of a return-to-duty test has been received.

A positive return-to-duty test result is another DOT violation and may result in termination. A driver with a positive return-to-duty test will be required to complete an entirely new SAP return-to-duty process. A driver will not be returned to safety-sensitive functions until a negative return-to-duty test result is obtained.

In accordance with DOT rules, a return-to-duty drug test must be an observed collection.

Under independent authority, the driver's department may require that the cost of return-to-duty tests be borne by the driver.

When a driver's Return-to-duty test is negative, the University's DER will record the date of the negative Return-to-duty test result on the Clearinghouse within twenty-four (24) hours, making the driver eligible to return to safety-sensitive functions.

6. **Follow-up Testing**

A driver who returns to duty after complying with the recommendation(s) of a Substance Abuse Professional, and after providing a negative result on a return-to-duty test, is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the Substance Abuse Professional. Follow-up testing may be scheduled for a period of up to sixty (60) months and must include no fewer than six (6) tests to be conducted in the first twelve (12) months after the driver's return-to-duty date. Follow-up alcohol testing shall be conducted only just prior to, during, or just after the driver's performance of safety-sensitive functions, or when the driver is in readiness to perform safety-sensitive function. (The University considers all on-duty time to be in readiness).

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

Under independent authority, the driver's department may require that the cost of all follow-up tests be borne by the driver.

When the driver's department, under independent authority, has terminated a driver from employment, the responsibility for any remaining follow-up tests recommended by a Substance Abuse Professional must be assumed by the driver's gaining employer, provided the driver is offered employment as a DOT-covered employee with a new employer.

Under independent departmental authority, a newly-hired driver who is subject to follow-up testing from a previous violation while working for a previous employer may be required to pay the cost of any remaining follow-up tests.

When a driver's follow-up testing plan has been successfully completed, and the last test result is negative, the University's DER will record the date of the final follow-up test result on the Clearinghouse within twenty-four (24) hours, indicating that the driver has completed DOT's return-to-duty process.

A violation will continue to appear on the Clearinghouse until 5 years from the date of the violation, or until the follow-up testing plan has been completed, whichever is later.

D. GENERAL TESTING INFORMATION (STANDARDS AND INTEGRITY OF THE TESTING PROCESS)

1. All tests shall be conducted as specified in U. S. Department of Transportation's 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
2. An applicant or driver has the right to request and receive a copy of the test result report on any drug or alcohol test for which he/she provided a urine or breath sample. For alcohol test results, the request should be made in writing to the primary DER. For drug test results, the request can be either verbal or in writing, and addressed to the Medical Review Officer (MRO).
3. Collection and testing procedures will be such as to protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct driver.
4. When a driver is required to obtain a medical examination by a medical specialist (related to inability to provide a sufficient breath or urine specimen), the University will not be responsible for any costs associated with that examination.
5. Results of additional tests arranged by a driver, or requested by a medical practitioner, will not be considered. This includes testing of blood samples, hair samples, DNA, or any other testing methods or protocols.

E. ALCOHOL TESTING AND THE REPORTING OF ALCOHOL TEST RESULTS

1. Alcohol tests (screening and confirmatory) will be performed on a device that appears on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) and that meets the DOT's testing requirements.
2. When a specific time for a driver's test has been scheduled, and the driver does not appear at the collection site at the scheduled time, the Breath Alcohol Technician (BAT) will contact the primary DER, who may determine that the driver has refused to be tested.

3. For alcohol testing (screening and confirmatory), a breath sample will be collected and analyzed by a BAT using an Evidential Breath Testing device (EBT).
4. If the result of the screening test indicates an alcohol concentration of 0.02 or greater, a BAT will perform a confirmatory test, no less than fifteen (15) and no more than thirty (30) minutes after the completion of the screening test.
5. If the confirmatory test is positive (0.04 and above, BrAC), the BAT shall immediately notify the primary DER. The driver will be removed from duty and FMCSA regulations will apply.
6. The University's DER will record positive alcohol tests and refusals to submit to an alcohol test, and other alcohol violations (Section VI(B)) on the FMCSA Clearinghouse by the close of the third business day following the date on which the University became aware of the violation
7. If the confirmatory test is .02 or greater, but less than .04, the BAT shall immediately notify and forward results to the University's DER and the employee will be removed from duty for 24 hours.
8. Random, reasonable suspicion, and follow-up alcohol testing must be done just before, during, or just after a driver performs safety-sensitive function, or at any time the driver is in readiness to perform safety-sensitive function. (The University considers all on-duty time to be in readiness).
9. A required return-to-duty alcohol test must be completed, with a negative test result, prior to a driver returning to performing any safety sensitive-function.

F. CONTROLLED SUBSTANCES TESTING, THE MRO PROCESS AND THE REPORTING OF DRUG TEST RESULTS

1. All controlled substances testing specimens shall be analyzed by a laboratory that is approved by the U. S. Department of Health and Human Services (DHHS), and that observes applicable chain-of-custody procedures.
2. When a specific time for a driver's test has been scheduled, and the driver does not appear at the collection site at the scheduled time, the collection site personnel will contact the primary DER, who may determine that the driver has refused to be tested.
3. At the collection site, the driver will be required to empty his/her pockets and display the items in them. A refusal to empty all pockets as directed by the collector will be a refusal to be tested.
4. If a urine specimen temperature is outside the acceptable range (90 – 100 degrees F), the collector must immediately require a new collection, under direct observation.
5. A driver who refuses to provide a second specimen, or who refuses to permit a direct observation collection, will be determined to have refused to be tested.
6. When a specimen for a drug test is collected under observed conditions, the observer must request the driver to raise his/her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer that the driver does not have a prosthetic device. The driver may then return clothing to its proper position for observed urination.
7. If the employee is unable to urinate or provides an insufficient quantity of urine (less than 45 mL), the employee will be provided fluids to drink (up to 40 oz.) and up to three hours to provide an adequate specimen. (Not drinking the water is not considered to be a refusal). If the employee is unable to provide an adequate specimen after three hours, the collection process will cease. The collector will inform the University, and the employee will be directed to be evaluated by a licensed physician acceptable to the MRO within five (5) days. If the MRO determines, after review of the physician's findings of the examination of the employee, that there is no medical explanation for the employee's failure to provide an adequate specimen, the employee will be considered to have refused to test.
8. The DHHS-approved testing laboratory shall forward the results of every drug test to a University-designated Medical Review Officer (MRO) for review.

9. The MRO must verify a confirmed positive test result for marijuana, cocaine, amphetamines, semi-synthetic opioids (i.e., hydrocodone, hydromorphone, oxycodone, and oxymorphone), and/or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in his or her system. In determining whether an employee's legally valid prescription consistent with the Controlled Substances Act for a substance in these categories constitutes a legitimate medical explanation, the MRO is not permitted to question whether the prescribing physician should have prescribed the substance.
10. If the test result is negative, the result will be reported by the MRO to the primary DER.
11. If the test result is confirmed positive, adulterated, substituted or invalid, the driver will be given an opportunity to discuss the test result with the MRO.
12. If the test result is verified as positive, or as a refusal to test because of adulteration or substitution, the MRO shall inform the driver of his/her right to request a retest of the same specimen at a different DHHS-approved laboratory, and of the process for doing so. Such request must be made by the driver, verbally or in writing to the MRO, within seventy-two (72) hours of the driver having been informed of a verified positive test result.
13. The driver's department, under independent authority, may require that the driver bear the cost of a retest.
14. If, after making 3 attempts in a 24-hour period, the MRO is not able to contact the driver, the MRO shall report to the DER that all reasonable efforts have been made to contact the driver, without success. The DER shall then, as soon as practicable, ask the driver to contact the MRO within the next seventy-two (72) hours, and shall apprise the MRO that the driver has been so notified.
15. The MRO may verify a test as positive without communicating with the driver if:
  - a. The driver expressly declines the opportunity to discuss the test result; or
  - b. The secondary DER has successfully made and documented a contact with the driver and instructed the driver to contact the MRO and more than 72 hours have passed since the time the driver was successfully contacted by the secondary DER; or
  - c. Neither the MRO nor the secondary DER, after making all reasonable efforts, has been able to contact the driver within 10 days of the date on which the MRO receives the confirmed positive test result from the laboratory.
16. If a test is verified positive under the circumstances specified in #15 (b,c) above, the driver may, within 60 days, present to the MRO information documenting that serious illness, injury or other circumstances unavoidably prevented the driver from being contacted by the MRO or the DER, or from contacting the MRO, as applicable, within the times provided. The MRO, based on such information, may reopen the verification, allowing the driver to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO will declare the test to be negative.
17. When a required drug test (pre-employment/pre-placement, return-to-duty, or follow-up) is canceled, the driver will be required to immediately take another test, with minimum advance notice.
18. A positive dilute drug test will be considered to be a positive test.
19. When the MRO reports a negative dilute test result with creatinine level greater than or equal to 2 mg/dL but equal to or less than 5 mg/dL, DOT regulations require the driver to submit to an immediate recollection under direct observation, with minimum advance notice. (A refusal to provide this second specimen will be a refusal to be tested.)
20. A negative dilute drug test (or the report of an invalid specimen) will result in the driver being required to immediately take another test, unobserved, with minimum advance notice. (A refusal to provide this second specimen will be a refusal to be tested.)
21. If, in the MRO's opinion, the driver provides information that medically disqualifies the driver from performing safety-sensitive functions, or that causes the MRO to have concern about the

driver's ability to safely perform his/her safety-sensitive duties, the MRO is required to give that information to the primary DER.

22. After verifying the test results, the MRO shall report the test results in a confidential manner to the DER. The MRO's report will include:
  - a. The driver's name, date of birth, CDL # and State of issuance;
  - b. Employer's name, address and US DOT# (if applicable);
  - c. The date of the test, and date of the verified result;
  - d. The reason for the test (e.g., random, post-accident, etc.);
  - e. Federal Drug Testing Chain of Custody Form (CCF) specimen ID number;
  - f. The test results will be reported as either positive (with the identity of the specific controlled substance), negative, dilute, refusal to test, or canceled,
  - g. In the case of an adulterated specimen, the adulterant/reason must also be provided.
23. The MRO must report verified positive, adulterated or substituted drug test results and MRO-determined refusals to the Clearinghouse within two (2) business days of making a determination or verification.
24. A required return-to-duty drug test, with an observed collection, must be completed, with a negative test result, prior to a driver returning to performing any safety-sensitive function.

## **VII. TEST RECORDS**

Records pertaining to the alcohol and controlled substances testing program shall be maintained in secured and locked confidential files in University Health and Safety (UHS). Access to these records shall be limited to the DER and the Drug and Alcohol Program Manager (DAPM).

Records and report data shall be maintained as specified in FMCSA's rules and regulations.

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

The University may disclose information required to be maintained under this policy in connection with a lawsuit, grievance, or other proceeding as initiated by or on behalf of the individual, and arising from the results of an alcohol and/or drug test administered under this policy, or from the University's determination that the employee engaged in conduct prohibited by this policy (including without limitation in a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee), where authorized by DOT rules and regulations and other applicable law.

## **VIII. CONSEQUENCES OF PROHIBITED CONDUCT**

If an applicant who has tested positive, or who refused to be tested, intends to re-apply to the University, or to another transportation industry employer, he/she must first successfully complete a SAP assessment and recommendation.

When the primary DER receives notice of a driver's verified positive drug or alcohol test result, or of a verified refusal to be tested, or of any other violation of FMCSA rules (See Section VI[B], Prohibited Conduct), the driver will be immediately removed from all FMCSA safety-sensitive functions (see definition: *safety-sensitive function* in Section XIII), including driving, and will not be permitted or required to return to performing safety-sensitive functions until or unless the driver successfully completes the return-to-duty process that is required by FMCSA under this regulation. This includes a supervisor or manager having actual knowledge (see definition: *actual knowledge* in Section XIII) that a driver has used alcohol on duty, or a controlled substance on duty, without authorization.

If a driver is employed by multiple DOT employers and has a violation for one of those employers, the driver is required by DOT regulation 382.415, to notify the other employer(s) of that violation, in writing, before the end of the business day following receipt of notification of the violation, or prior to performing any safety-sensitive function, whichever comes first.

The driver will receive, from the secondary DER, the phone number of the University's contracted service provider. Under independent authority, the primary DER will accept an evaluation conducted only by Substance Abuse Professionals recommended/approved by the University's contracted service provider. Additionally, DOT regulations do not permit a driver to obtain a second Substance Abuse Professional's evaluation. If a driver does obtain a second SAP's opinion, DOT regulations do not permit the University Health and Safety—Biosafety and Occupational Health Department to accept or acknowledge that second opinion.

The driver will be required to electronically invite the SAP to conduct a SAP return-to-duty process and be able to enter information on the driver's Clearinghouse record.

If the driver wants his/her driver position to be held open, the University requires the driver (within three [3] working days) to notify the secondary DER of a scheduled SAP appointment for assessment and evaluation. If no such notification is made, the University will assume the driver has voluntarily resigned.

If a driver refuses to submit to testing, the University will, under independent authority, consider the driver to have voluntarily resigned.

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

If possible, the University will reassign a driver to non-safety-sensitive functions while he/she is following the Substance Abuse Professional's recommended program of assistance and/or education. However, due to the safety-sensitive nature of most of the jobs that involve driving CMVs, the University can make no guarantee that these accommodations can or will be made.

Under independent authority, the driver's department will temporarily hold a driver's position open when that driver has been removed from safety-sensitive functions as a consequence of engaging in prohibited conduct. The University will require the Substance Abuse Professional to report weekly by phone to the secondary DER regarding the driver's continued participation in the Substance Abuse Professional's recommended program. If it is reported by the Substance Abuse Professional that the driver is not fully cooperating with the recommendation, or that the driver has dropped out of the recommended program, the University may at that time consider the driver to have voluntarily resigned, and may take steps to fill the position with another driver or applicant.

A driver who is following a Substance Abuse Professional's recommendation of treatment may access benefits under Family and Medical Leave Act (FMLA), provided he/she is eligible for such benefits. The University will permit a driver who has been removed from safety-sensitive functions under these regulations to request leave during the assessment and/or treatment phase.

The SAP is responsible for recording two dates on the driver's Clearinghouse record: 1) the date of the completion of the assessment and 2) the date on which the SAP determines that the driver has successfully complied with the SAP's recommendation for treatment and/or education. The SAP is required to enter each of those dates by the close of the next business day after which they occurred.

When a SAP determines that a driver has successfully complied with the SAP's recommendations, the SAP will record the date of that compliance on the driver's Clearinghouse record. The SAP will also prepare a report of compliance, and a follow-up testing plan, to be sent to the University's DER. Upon receiving a SAP's report of compliance with recommendations, the University will arrange for the driver to take a Return-to-Duty test. In order for the employee to return to safety-sensitive functions, this Return-to-Duty test must be an observed collection and must have a negative test result.

Upon receiving a Substance Abuse Professional's report of compliance with recommendations, the primary DER will arrange for the driver to take a return-to-duty test. In order for the driver to return to safety-sensitive functions, this return-to-duty test must have a negative test result.



The University, under independent authority, requires that any costs incurred in regard to services provided by a Substance Abuse Professional, or of treatment and/or education recommended by the Substance Abuse Professional, which are not covered by a driver's insurance plan, will be the responsibility of the driver.

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

## **IX. EDUCATION AND TRAINING**

Any driver who has questions or concerns regarding this program may seek clarification and further details from the primary DER.

A copy of this program will be provided to each driver. Educational materials concerning the effects of alcohol and controlled substances use on an individual's health, work and personal life, signs and symptoms of an alcohol or controlled substances problem (the driver's or a coworker's) and available methods for intervening when an alcohol or controlled substances problem is suspected, will be provided to each driver. Answers to questions about these materials may be addressed to the primary DER.

The most current version of this program is an appendix to: <http://policy.umn.edu/finance/vehicles>.

Attendance at training programs will be mandatory for supervisors and other drivers involved in administering the controlled substances/alcohol testing program. Only supervisors who have completed this training are permitted to order a reasonable suspicion for a DOT-covered driver.

Supervisors who are designated to determine whether reasonable suspicion exists and who then order a FMCSA-driver to undergo testing under FMCSA rules and regulations will receive at least 60 minutes of training on recognizing alcohol misuse, and at least 60 minutes of training on recognizing controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

All supervisors who participate in training will be given a certificate of completion of such training. The original certificate will be kept in the office of the for the length of time that an employee is a DOT supervisor, and for two years after the employee ceases to have supervisory responsibility or is no longer employed at the University. A copy will be provided to each supervisor for his/her own records, when requested.

## **X. SELF-IDENTIFICATION POLICY**

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

A driver who admits to a drug and/or alcohol problem will not be assumed to have a FMCSA violation. He/she will be given an opportunity to obtain a chemical use assessment from the University's contracted service provider. Prior to the assessment, however, The University will require the driver to sign a release of information that will enable the secondary DER to receive the results of the assessment, and to receive subsequent reports related to the assessment, and the driver's successful completion of all recommendations for assistance.

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

- The driver's admission cannot be made during his/her on-duty time. It must occur prior to the driver's reporting for duty on any day.
- The driver's admission cannot be made in an attempt to avoid a required FMCSA drug test.
- Under 49 CFR Part 382.121, FMCSA requires the driver's department to remove the driver from safety-sensitive functions, including driving.

- When the secondary DER is satisfied that the driver has successfully complied with the contracted service provider's recommendations for assistance, the driver's supervisor will return the driver to safety-sensitive functions.
  - The driver will then be subject to non-DOT follow-up testing for no more than 2 years.
- A driver who self-identifies under this program, and who then fails to comply with the contracted service provider's recommendations will be considered to have engaged in conduct prohibited by the FMCSA in 49 CFR Part 382, Subpart B, and will not be permitted to return to safety-sensitive function until he/she has successfully complied with the SAP return-to-duty process.

The University will adhere to the following terms, in accordance with 49 CFR Part 382.121;

- The University will take no adverse action against a driver who admits to drug and/or alcohol use under the terms above, provided he/she cooperates with the assessment and recommendations for treatment.
- A driver who self-identifies under this program will be given reasonable time to obtain the required assessment and assistance. Under independent authority, the University requires the assessment process to be initiated within three (3) days of the driver's disclosure.
- A driver who complies with all requirements, and who complies satisfactorily with the contracted service provider's recommendations for assistance, will be permitted to return to safety-sensitive functions.
- A driver who cooperates and successfully complies with this program will not be considered to have had a FMCSA violation of prohibited conduct under 49 CFR Part 382, Subpart B.
- A driver who fails to comply with treatment recommendations, either under this provision, or as recommended by a Substance Abuse Professional, will be subject to disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines, under independent authority.

## **XI. FMCSA CLEARINGHOUSE**

All drivers must be registered on the Clearinghouse. To register, a driver will be asked to provide his/her CDL# and the State in which the license was issued. All violation information will be entered under the driver's CDL#.

Beginning in 2023, all State Drivers License Agencies (SDLA) will be required to access the Clearinghouse and query a driver's violation record before issuing a CDL.

All drivers are required to provide a one-time written consent for the University to annually conduct a limited query of their record on the Clearinghouse. A driver who has not provided this consent for a limited query will not be permitted to drive a Commercial Motor Vehicle.

If a full query is needed, the driver will be requested to access his/her record on the Clearinghouse and provide electronic consent. When requested, this consent must be provided within 24 hours of the request. A driver who refuses to provide electronic consent on the Clearinghouse within 24 hours will be removed from duty and will not be permitted to perform safety-sensitive functions until authorization has been provided and a full query indicates a clear record, with no open violation.

The Clearinghouse will notify a driver any time information about the driver is added, revised, or removed from the driver's record. At the time the driver registers on the Clearinghouse, the driver will have to choose whether to receive such notification by U.S. mail, or by email.

A driver may access his/her own record on the Clearinghouse at any time, at no cost. A driver may challenge only the accuracy of information reported, but not the accuracy or validity of test results or refusals.

The University will report a drug and alcohol violation by the close of the third business day following the date on which the University obtained the information, as required by DOT's regulation.

Results of non-DOT tests and refusals will not be recorded on the Clearinghouse.

A SAP's follow-up testing plan will not be recorded on a driver's Clearinghouse record.

When the last follow-up test of a SAP's plan has been conducted, the University will report the date of that final test on the Clearinghouse, which will indicate to future employers that the requirements of DOT's return-to-duty process have been successfully completed.

Driver violations will be shown in the Clearinghouse for five (5) years from the date of the violation determination, or until the violation is resolved through the successful completion of the return-to-duty process and follow-up testing plan as required by the Substance Abuse Professional, whichever is later. This means that if, for example, a SAP requires two years of follow-up testing, the violation will continue to appear on the Clearinghouse record for three additional years. If the driver applies for a new job during that time, the driver's violation will be visible to a new employer, even when the driver has completed the SAP's follow-up testing plan.

When the University determines that a driver has provided the Company with "actual knowledge" (Section VI(B)), the University's DER will enter the following information on the Clearinghouse related to the driver's violation:

- Driver's name, date of birth, CDL# and State of issuance;
- The University's name, address and USDOT number, if applicable;
- Date that the University obtained actual knowledge of the violation;
- Witnesses to the violation, if any, including contact information and signed witness statements;
- Description of the violation;
- Evidence supporting each fact alleged in the description of the violation, which may include, but is not limited to, affidavits, photographs video or audio recordings, employee statements (other than admissions pursuant to the University's Self-Identification Policy (Section X)), correspondence, or other documentation; and
- A certificate of service or other evidence showing that the University provided the employee with all information reported

The University will be responsible for costs and fees associated with the Clearinghouse.

## **XII. OTHER CONSEQUENCES**

The following consequences (which are any other consequences described in this program that differ from the minimum requirements of FMCSA rules and regulations) are imposed by the University under independent authority as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines, and are not required by FMCSA regulations.

### **A. Termination of Employment**

1. The University will not guarantee reinstatement of a driver who has been removed from safety-sensitive functions after engaging in prohibited conduct, even when that driver is involved and cooperating in DOT's return-to-duty process. The University reserves the right to withhold a final decision regarding reinstatement until after results of a return-to-duty test have been received.
2. A driver who engages in prohibited conduct (Section VI[B]) a second time may be subject to disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.
3. A driver who tests positive for controlled substance or whose test indicates alcohol concentration of 0.04 or greater following a fatal accident will, under FMCSA rules, be immediately removed from service, and, under the University's independent authority, may be subject to disciplinary action up to and including termination of employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.
4. A driver who is convicted of driving under the influence of controlled substances and/or alcohol while on duty may be subject to disciplinary action up to and including termination of

employment as established by University Human Resources Policies and Procedures, bargaining unit agreements, Civil Service Rules, and P&A Guidelines.

5. An employee/driver who refuses to submit to required testing for alcohol and/or controlled substances will be considered to have voluntarily resigned.
6. A driver who provides three alcohol test results that are greater than 0.02 but below 0.04, and whose employment is not terminated as provided herein, will be terminated from employment if he/she refuses to be assessed by a University-approved assessor, or refuses to sign a release of information for the University to receive assessment results, or refuses to participate in or complete a program of rehabilitation or treatment recommended by the assessor.
7. When a driver has not reported a scheduled SAP appointment within three (3) working days after receiving the Substance Abuse Professional's name and phone number, the University will no longer continue to hold the driver's position open, and will consider the driver to have voluntarily resigned.
8. If a Substance Abuse Professional reports that a driver is not cooperating, or has dropped out of the program, the University will consider that the driver has voluntarily resigned and will take steps to replace the driver.
9. When it is discovered that a driver provided false information regarding previous test results on pre-employment tests, or when other information on the application has been falsified, the driver will be immediately removed from safety-sensitive functions, and required to complete a SAP assessment and return-to-duty test before being considered for return to safety-sensitive functions.

B. Suspended Status

1. When a driver's alcohol test result is above 0.02 but less than 0.04, FMCSA regulations require that the driver be removed from safety-sensitive functions (See definition: *safety-sensitive*) for twenty-four (24) hours. Under independent authority, the driver's department may consider this to be unpaid leave.
2. When a driver is using a prescription medication for a controlled substance and provides no written notice or authorization from a licensed medical practitioner advising that the driver may continue to safely operate a commercial motor vehicle while using the medication, the driver's department reserves the right to place the driver on unpaid leave until such information is received by the primary DER or until the medication is no longer required.

### XIII. DEFINITIONS

- **Accident** means an occurrence involving a commercial motor vehicle operating on a public road in which:
  - a. There is the loss of human life; or
  - b. The driver receives a citation under State or local law for a moving traffic violation arising from the accident; **and**
    - (1) Any involved vehicle sustains disabling damage as defined in this program; and/or
    - (2) Anyone receives bodily injury that requires immediate medical treatment away from the accident scene.
- **Actual knowledge** means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the driver, information provided by the driver's previous employer(s), a traffic citation, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances, or a driver's admission of alcohol or controlled substance use, except as provided by our Self-Identification Policy (Section X). Actual knowledge also includes on-duty use of alcohol, pre-duty use of alcohol, and use of alcohol prior to a post-accident test.
- **Adulterated specimen** means a specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

- **Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- **Alcohol concentration (or content)** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test (BrAC).
- **Alcohol screening device (ASD)** means a breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA.
- **Alcohol use** means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.
- **Aliquot** means a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.
- **Clearinghouse (FMCSA)** means a secure online database that will give employers, the Federal Motor Carrier Safety Administration (FMCSA), State Driver Licensing Agencies (SDLAs), and State law enforcement personnel real-time information about commercial driver's license (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations. (See Prohibited Conduct (Section VI(B)). When a driver completes the return-to-duty process and follow-up testing plan, this information will also be recorded in the Clearinghouse.
- **Breath Alcohol Technician (BAT)** is a person who instructs and assists drivers in the alcohol testing process and operates an evidential breath testing device.
- **Canceled test** means a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is otherwise required, by 49 CFR Part 40, to be canceled. A canceled test is neither a positive nor a negative test. The University will not take adverse job action based on a canceled test.
- **Collection site** means a place designated by University Health and Safety—Biosafety and Occupational Health Department where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of controlled substances, or for purposes of providing a breath sample to be analyzed for alcohol concentration.
- **Confirmatory test**
  - a. For alcohol testing, a confirmatory test is a second test following a screening test with a result of 0.02 or greater, conducted 15-30 minutes later, that provides quantitative data of alcohol concentration. This test is performed on an Evidential Breath Testing device (EBT) and is conducted by a Breath Alcohol Technician (BAT).
  - b. For controlled substances testing, a confirmatory test is a second analytical procedure performed on a different aliquot of the original specimen to identify the presence of a specific drug or metabolite.
- **Confirmatory validity test** means a second test performed on a different aliquot of the original urine specimen to further support a validity test result.
- **Consortium/Third Party Administrator** means a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to University Health and Safety—Biosafety and Occupational Health Department, as required by the DOT rules and regulations.
- **DER (designated employer representative)** means an employee(s) authorized by the University to take immediate action(s) to remove drivers from safety-sensitive duties, or cause drivers to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The primary DER also receives test results, SAP reports, and other communications on behalf of the University, consistent with the requirements of 49 CFR Part 40. (The University's primary DER is an appointed employee in University Health and Safety—Biosafety and Occupational Health Department.)
- **DHHS-approved laboratory** means any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs.
- **Dilute specimen** means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

- **Disabling damage** means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.  
**Inclusions.**  
Damage to motor vehicles that could have been driven but would have been further damaged if so driven.  
**Exclusions.**
  - Damage that can be remedied temporarily at the scene of the accident without special tools or parts.
  - Tire disablement without other damage even if no spare tire is available.
  - Headlight or taillight damage.
  - Damage to turn signals, horn, or windshield wipers that make them inoperative.
- **DOT rules and regulations** include rules and regulations established by U.S. Department of Transportation (DOT) and Federal Motor Carrier Safety Administration (FMCSA).
- **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 who are employed by the University, or who operate a commercial motor vehicle at the direction of or with the consent of the University.
- **Drugs.** The drugs for which tests are required are marijuana, cocaine, amphetamines and methamphetamines (including MDMA [Ecstasy] and MDEA), phencyclidine (PCP), and opioids. Opioids include codeine, heroin, morphine, and semi-synthetic opioids: hydrocodone, oxycodone, hydromorphone, and oxymorphone. Common names for these semi-synthetic opioids include OxyContin, Percodan, Percocet, Vicodin, Lortab, Norco, Dilaudid, and Exalgo, among others.
- **Employer** means any person who owns or leases a commercial motor vehicle or who assigns persons to operate such a vehicle. In this program, Employer means the University, including its agents, officers and representatives.
- **Evidential Breath Testing Device (EBT).** A device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.
- **FMCSA** means Federal Motor Carrier Safety Administration, an Operating Administration of the U.S. Department of Transportation (DOT).
- **Full query (Clearinghouse)** allows the University to see detailed information about drug and alcohol violations on a driver's record. The University must obtain the driver's electronic consent in the Clearinghouse in order to be able to access that detailed and specific information. A driver must provide consent for a full query within 24 hours of being notified.
- **Illegal drugs** include any so-called "synthetic" marijuana products, any so-called "bath salt" type products, or any product not prescribed by a doctor or similar licensed health care professional which causes intoxication or impairment of safety-sensitive functions.
- **Initial drug test (screening drug test)** means the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
- **Initial specimen validity test** means the first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.
- **Injury** (for post-accident testing) excludes (i) an occurrence involving only boarding or alighting from a stationary motor vehicle; or (ii) an occurrence involving only the loading or unloading of cargo; or (iii) an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle by a driver, unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be placarded.
- **Invalid drug test** means the result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.
- **Job applicant** means a person, independent contractor, or person working for an independent contractor, who applies to become a driver/employee of the University and includes a person who has received a job offer made contingent on the person passing a drug test.
- **Limit of Detection (LOD)** means the lowest concentration at which an analyte can be reliably shown to be present under defined conditions.

- **Limited query (Clearinghouse)** allows the University to determine if an individual driver's Clearinghouse record has any information about resolved or unresolved drug and alcohol program violations but does not release any specific violation information contained in the driver's Clearinghouse record. A limited query requires only a driver's general one-time consent, which, under the University's independent authority, is valid for an unlimited number of queries, for the duration of employment with the University.
- **Medical Review Officer** means a licensed physician responsible for receiving laboratory results generated by the University's drug testing program who has knowledge of substance abuse disorders and who has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information. An MRO must have completed an MRO Qualification Training specific to Part 40, and an examination administered by a nationally recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests.
- **Negative result (drugs)** means the result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug, or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.
- **Non-negative specimen** means a urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s), and/or invalid.
- **Oxidizing adulterant** means a substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites or affects the reagents in either the initial or confirmatory drug test.
- **Positive Test (alcohol)** occurs when a driver's confirmatory test result reads 0.04% BrAC or higher.
- **Positive result (drugs)** means the result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.
- **Primary Designated Employer Representative (DER)** means an employee of University Health and Safety—Biosafety and Occupational Health Department assigned to act as the primary resource for questions related to the Program, work in conjunction with the secondary Designated Employer Representative (DER) when there is a violation under this Program, to maintain the testing pool, to schedule tests, to communicate test results and to maintain test records.
- **Querv (Full)** see Full Query (Clearinghouse)
- **Querv (Limited)** see Limited Query (Clearinghouse)
- **Random selection** means a scientifically valid method for selection of drivers to be tested that results in an equal probability that any driver from a group of drivers subject to the selection mechanism will be selected, and does not give an employer discretion to waive the selection of any driver under the mechanism. Thus, a driver might be selected more than once during a year.
- **Reasonable suspicion** means a belief that a driver has violated alcohol or controlled substances prohibitions, based on specific, contemporaneous, documentable observations concerning the appearance, behavior, speech, or body odors of that driver. In the case of controlled substances, the observations may include indicators of the chronic and withdrawal effects of controlled substances.
- **Reconfirmed** means the result reported for a split specimen when the second laboratory can corroborate the original result reported for the primary specimen.
- **Refusal to submit to a required alcohol test** includes failure to appear for any alcohol test, or within a reasonable time, failure to provide a breath specimen for a required test, failure to remain at the testing site until the testing process is complete, failure to provide a sufficient breath specimen without a medical explanation, failure to undergo a medical examination following inability to provide a sufficient breath specimen, refusal to sign Step 2 of the Alcohol Testing Form, and failure to cooperate with the testing process.
- **Refusal to submit to a required drug test** includes failure to appear for any drug test, or within a reasonable time, failure to remain at the collection site until the testing process is complete, refusal to provide a urine specimen for a required drug test, failure to permit a directly observed or monitored collection when required by 49 CFR Part 40 procedures, failure to provide a sufficient amount of urine without a medical explanation, failure to take a second test when required by a collector or the University, failure to undergo a medical examination following inability to provide a sufficient urine sample, and failure to cooperate with the collection/testing process (including

refusing to empty pockets at the collection site and refusing to wash hands when instructed), behaving in a confrontational way that disrupts the collection process, possessing or wearing a prosthetic or other device that could be used to interfere with the collection process, or admitting to the collector or MRO that the specimen had been adulterated or substituted.

If an applicant refuses to submit to pre-employment testing, the job offer will be immediately withdrawn, and the applicant will be provided with the name, address and phone number of qualified SAPs. An applicant who fails to show up for a pre-employment test, or who shows up and leaves the collection site before having selected a collection kit, is not deemed to have refused to submit to a pre-employment drug test. (40.191[a][2]).

- **Rejected for testing** means the result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.
- **Safety-sensitive function** means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include: a) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer; b) All time inspecting equipment as required by Parts 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; c) All time spent at the driving controls of a commercial motor vehicle in operation; d) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of Part 393.76); e) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; f) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle; and g) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by these rules, and when directed by the University. A driver is performing a safety-sensitive functions during any period in which he/she is performing, ready to perform, or immediately available to perform safety-sensitive functions. (The University considers all on-duty time to be in readiness).
- **Screening drug test (for drugs):** See “Initial test (for drugs)” definition above.
- **Screening test** (for alcohol) means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in a breath specimen.
- **Secondary Designated Employer Representative (DER)** means a Human Resources employee from an FMCSA-covered driver’s administrative unit, department, or campus who will be involved in deciding what disciplinary action to take against the FMCSA-covered driver when there is a violation under the program.
- **Split specimen collection** means a collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).
- **Substance Abuse Professional (SAP)** means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, marriage and family therapist (MFT), or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission [NAADAC] or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse [ICRC]), or by the National Board of Certified Counselors, Inc. and Affiliates/MAC [NBCC], with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. A Substance Abuse Professional evaluates drivers who have violated a FMCSA drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. A SAP must have completed a SAP Qualification Training specific to Part 40 and modal rules, and a SAP Exam.
- **Substituted specimen** means a urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.
- **Testing levels** means levels established by the U.S. DHHS, at which a specimen or sample is determined to be either negative or positive, according to 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
- **University property** means all owned and/or -leased property, including but not limited to owned and/or leased buildings and other real estate, parking lots and vehicles located on parking lots, and University-owned and/or -leased vehicles, lockers, and desks.



#### **XIV. REFERENCES**

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

Title 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended.

University of Minnesota's Human Resources Policies and Procedures including, but not limited to, governing bodies such as labor contracts, Civil Service Rules, and P&A Guidelines

Should there be conflicts between Federal regulations and this program, attributed in part to revisions to the law or changes in interpretations, and when those changes have not been updated or accurately reflected in this program, the Federal law shall prevail.

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

*The University may change, alter, or eliminate any or all portions of this program as it deems appropriate, or as mandated or permitted by applicable laws, and may interpret it in response to any circumstance. An up-to-date copy of the program is kept in University Health and Safety—Biosafety and Occupational Health Department and on the University Health and Safety website. Drivers may request to see the program at any time during normal business hours. The most current version of this program is an appendix to: <http://policy.umn.edu/finance/vehicles>*

*The program itself is at: <https://bohd.umn.edu/dot-drug-and-alcohol-program>*

*A link to the federal regulations governing the program is: [http://www.dot.gov/ost/dapc/NEW\\_DOCS/part40.html](http://www.dot.gov/ost/dapc/NEW_DOCS/part40.html)*