

 <p style="text-align: center;">STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES</p> <p style="text-align: center;"><b>Policy and Procedure</b></p>	POLICY AND PROCEDURE NUMBER <p style="text-align: center;"><b>08.02.011</b></p>	PAGE <p style="text-align: center;">1 of 26</p>
	EFFECTIVE DATE <p style="text-align: center;">September 1, 2006</p>	
SUBJECT <b>Drug and Alcohol Prohibited Conduct, Testing, and Disciplinary Action for Employees Required to Obtain, Hold, or Use Commercial Driver Licenses</b>	SUPERSEDES  DPOL 08.02.011 DPDR 08.02.011	DATED  March 5, 1998 July 10, 1997
TITLE <b>Personnel</b>	CHAPTER <b>Personnel Administration</b>	APPROVED BY <p style="text-align: center;"><b>Signature on File</b></p>

## PURPOSE

This formalizes the policy and procedure (P&P) of the department on prohibited conduct, testing, and disciplinary action related to drugs and alcohol for employees who are required to obtain, hold, or use commercial driver licenses (CDLs) as a condition of employment.

This P&P is issued to comply with U.S. Department of Transportation, Federal Highway Administration, regulations detailed in 49 CFR 40, which requires that affected employees be notified of their employer's policy on appropriate disciplinary actions when such employees engage in drug- or alcohol-related prohibited conduct.

## POLICY

Employees who are required to obtain, hold, or use CDLs in their employment will not engage in the prohibited conduct identified in this P&P and will comply with all drug and alcohol testing procedures identified in this P&P. An employee who engages in prohibited conduct will be disciplined according to the tables of prohibited conduct and disciplinary consequences (Attachment B).

## PROCEDURE

### A. Prohibited Conduct

Attachment B describes prohibited conduct and the associated disciplinary consequences up to and including termination if the outcome of an investigation supports a finding of prohibited conduct. In addition, the following conduct is prohibited for all state employees:

1. The unauthorized use, possession, manufacture, distribution, or sale of an illegal drug, controlled substance, or drug paraphernalia on state property, while on state business, or during working hours.
2. Storing, on state property, any illegal drug, drug paraphernalia, or controlled substance.

## **B. Overview of the State Drug and Alcohol Testing Program**

The State of Alaska has established a statewide program of testing for employee drug and alcohol use. The testing program is managed by a contractor. The contractor subcontracts many of the individual services to other providers. The services consist of collecting specimens from employees subject to drug and alcohol testing, laboratory analysis and review of specimens, and reporting of results. There are specimen collection sites in dozens of communities across the state. When necessary, the contractor sends individual collectors to remote areas without collection sites and to other communities during hours that collection sites are closed.

There are five occasions when an employee is tested: at the point of hire or routine return to duty, before returning to duty after a suspension for violating this P&P, when selected for a random test, when reasonable suspicion indicates the need for a test, and after an accident involving a commercial motor vehicle. The protocol for each is discussed in detail below. Tests for alcohol use are breath tests. Tests for drug use are urine tests.

The department pays for all drug and alcohol tests except the split specimen test, which is the responsibility of the employee.

The testing program is centrally administered by the Division of Personnel (DOP). A DOP/ Management Services consultant in each of Anchorage, Fairbanks, and Juneau is the primary contact for the testing program in this department. These individuals are referred to as drug program managers (DPMs).

Employees subject to this P&P are encouraged to direct questions concerning drug and alcohol prohibited conduct, testing, and disciplinary action to the DPM in their region.

Supervisors of employees subject to this P&P should keep handy the name and contact information of the DPM in their geographic area. The successful operation of the testing program requires that supervisors and DPMs work together closely. Supervisors of CDL-holding employees are provided with contact information for DPMs (including outside normal business hours) and the testing contractor.

The DPM is the interface between the supervisor and the testing contractor for most issues. Supervisors will normally learn of a positive drug or alcohol test result or other violation of this P&P from the DPM. In the event a supervisor is informed directly by the

employee or the testing contractor of a positive test result for drugs or alcohol, the supervisor must stop the employee from returning to duty and contact the DPM or, in that person's absence, another responsible DOP/ Management Services employee regarding disciplinary action.

Appropriate discipline will be determined after consideration of the specific violation, the duration and quality of the employee's service to that point, prior discipline, any mitigating factors, and the level of discipline administered to other employees for similar violations under similar circumstances.

The disciplinary consequences established in this P&P stem from federal regulations governing CDL holders and from collective bargaining agreement provisions. They are minimum levels of action. Supervisors should refer to the appropriate bargaining agreement before applying disciplinary consequences.

Drug and alcohol test results are considered medical records and are filed in the employee's CDL file, separate from the employee's regular personnel file.

## **C. When an Employee is Tested and Related Requirements**

### **1. Pre-employment Requirements**

Pre-employment testing applies to individuals being hired for the first time into State of Alaska CDL positions; current employees not in CDL positions who are being promoted, transferred, or demoted to CDL positions; former employees being rehired into CDL positions; and employees returning from layoff and seasonal layoff.

All such employment actions are conditional on the individual meeting the requirements of the drug and alcohol testing program. Conditional means that an offer of employment or return to work may be made only with the condition that the individual meet the requirements of the drug and alcohol testing program before reporting to work.

The requirements are:

*New hire or current employee not in a CDL position who is being promoted, transferred, or demoted to a CDL position:* A new hire or an employee who has not previously worked for the State of Alaska in a CDL position must complete an employment history form and pass a background check, must take a drug test and achieve a negative result, and must sign and submit a CDL acknowledgement form.

*Rehired employee:* An employee who has previously worked for the State of Alaska in a CDL position must complete an employment history form (or update any previously submitted employment history form) and pass a background check. A rehired employee must also take a drug test and achieve a negative result if the employee has been out of the random testing pool for more than 30 days.

*Employee returning from layoff:* An employee returning from layoff who has been out of the random testing pool for more than 30 days must take a drug test and achieve a negative result unless the employee submits evidence of being included in another employer's drug testing program under 49 CFR 382 and has not been out of that random testing pool for more than 30 days.

*Employee returning from seasonal layoff:* An employee returning from seasonal layoff must complete an employment history form and pass a background check. The employee is required to take a drug test and achieve a negative result if the employee has been out of the random testing pool for more than 30 days.

Pre-employment requirements do not apply to applicants for CDL positions who are currently subject to the State of Alaska drug and alcohol testing program.

a. Background Check

The Division of Personnel/ Employment Services provides an employment history form in the course of the hiring or routine return to work process. The individual completes and submits the form. DOP/Management Services uses the employment history form to conduct a background check covering the previous two years (three years for hazardous materials endorsements) for violations of federal regulations governing drug and alcohol use by CDL holders. For new hires, current employees being promoted, transferred, or demoted into CDL positions, and rehired employees, the time period is measured from the date of application. For employees returning from seasonal layoff, the time period is measured from the date the employee is scheduled to return to work.

Passing a background check for violations of federal drug and alcohol regulations governing CDL employees means no violations or, if the individual has (a) violation(s), successfully meeting the requirements under these regulations for reemployment or a return to duty.

b. Drug Test

The hiring manager completes a donor referral sheet for the individual and arranges to send the individual to the nearest collection site. The referral sheet may be faxed directly to the collection facility or given to the

individual to hand carry. The DPM will make arrangements with the testing contractor to test in locations where no collection site is available.

The DPM receives the test result and notifies the hiring manager or supervisor as soon as a negative test result is received. A positive result on a pre-employment drug test means the job offer must be rescinded. The Division of Personnel keeps a record of the refusal to hire for statistical reporting purposes. Proof of an evaluation by a substance abuse professional is required to be eligible for future employment consideration.

It is a violation of federal regulation to put an individual subject to pre-employment testing to work performing safety-sensitive duties prior to passing the pre-employment drug test.

c. Acknowledgement Form

When the individual passes the background check and drug test, the hiring manager or supervisor will provide the individual with a CDL acknowledgment form. The individual signs this form to indicate awareness of prohibited drug and alcohol conduct, the testing program, and disciplinary consequences. The signed form is placed in the employee's CDL file. If the individual fails to sign this form, the job offer must be rescinded.

**2. Return-to-Duty Requirements after a Violation**

An employee suspended for a positive drug or alcohol test result must take and pass a return-to-duty test and six unannounced followup tests within a twelve-month period, all for either drugs or alcohol, depending on the original positive test, in addition to any random testing. In all first violation cases where a covered employee tests at or above .02 but less than .04 breath alcohol content, the employee must pass a return-to-duty breath alcohol test with a result less than .02 before being returned to safety-sensitive duties.

Before being returned to a safety-sensitive position in this department, the employee must also be evaluated by a substance abuse professional (SAP) to determine whether the employee needs assistance with a drug or alcohol problem. If so, the employee must complete any treatment recommended by the SAP and must have a follow-up evaluation after completing treatment to determine whether the employee has successfully met the treatment recommendations.

All costs associated with evaluations and treatment are the responsibility of the employee.

### **3. Random Testing**

#### a. What Is Random Testing?

All nine departments of state government that have positions requiring CDLs provide the names of their CDL-holding employees to the drug and alcohol testing program contractor. The contractor enters the names into a pool from which selections for random tests are drawn. Federal Motor Carrier Safety Administration 2001 random testing rates require 50% of the pool to be tested for drugs and 10% for alcohol each year.

#### b. Selecting Employees for Random Testing

The contractor selects the names to be tested during a given time period using a computerized, scientifically verifiable random selection program. The frequency of the selection process is determined mutually by the Division of Personnel and the contractor. During each selection, all employees in the pool have an equal chance of being selected, regardless of duty station.

Once the names are selected, the contractor lists them by department, region, and location. The contractor sends individual lists to the appropriate DPMs. The lists are kept highly confidential to ensure employees to be tested are not alerted before they are directed to report for testing. The DPM checks the names to be sure they are active employees in this department; notes any who are on seasonal leave, layoff status, or long-term leave; and verifies the duty station of each employee.

The DPM then notifies each employee's supervisor or foreman that the employee has been selected for random testing.

#### c. Scheduling the Random Test

The supervisor or foreman schedules the employee for the test but does not inform the employee that he or she has been selected for a random test until the employee needs to report to the collection site. The supervisor or foreman will make every effort to avoid scheduling tests that result in the department paying overtime.

Selected employees must be tested if they will be available at some time during the period. That is, the supervisor or foreman must not declare an employee as unavailable for testing if the employee is on leave but will

return to duty status during the testing period. Employees who are on itinerant crews can be tested when they return to their duty station or, if necessary, in the field.

The supervisor or foreman determines which of the employees selected for testing can be referred to a local contract collection site by checking the most current list of sites supplied by the testing contractor through the DPM. The supervisor or foreman then calls the collection site and makes an appointment.

If a community does not have a collection site, the supervisor or foreman contacts the testing contractor to make special arrangements. The contractor is required to make a collector available to all employees selected for random testing. The contractor may need to send a collector to the community or remote location.

If an employee is selected for both drug and alcohol testing, and the local collection site does not provide for both services, the supervisor or foreman contacts the testing contractor before scheduling either test. The contractor usually prefers to have a single collector conduct both required tests at a given location and will likely send a collector to the location.

If an employee to be tested is assigned to a shift falling outside the normal operating hours of the collection site, the supervisor or foreman contacts the testing contractor. The contractor may be able to make arrangements with the facility to be open at a time that falls within the employee's scheduled shift. If not, the employee will need either to be held over/start early and be paid appropriately or to have the shift reassigned.

d. Referring the Employee for Random Testing

To this point, employees should not be aware that they have been selected for testing. Informing the employee should be done as close as possible to the actual scheduled test so that the employee proceeds directly to the testing site. The supervisor or foreman refers the employee for testing by following the steps outlined below. The steps are the same whether the employee is going to a local collection site or meeting a collector by special arrangement.

1. Call the employee to a place of privacy and inform the employee that he or she has been selected for random testing. Do not share this information with anyone else who does not have a legitimate need for it.

2. If the employee is going to a collection site, fax the referral sheet to the collection site and state whether the referral is for drug testing only or both drug and alcohol testing. If the employee is meeting a collector by special arrangement, the collector already has the referral sheet.
3. Direct the employee to report immediately to the collection site and to make no stops along the way. Direct the employee to take nothing orally until testing is completed. On the referral sheet, write the appointment time and the time you informed the employee to proceed to testing.
4. Tell the employee that photo identification will be required.
5. Tell the employee that failure to keep the appointment or to participate in the testing constitutes a positive test and will subject the employee to either a 90-day suspension or immediate termination for cause.
6. If the employee refuses to participate, or states he or she is unable to participate for any reason, clearly inform him or her that the consequences are a 90-day suspension or immediate termination for cause. If the employee still refuses or insists he or she is unable to test, immediately contact your DPM or, in that person's absence, a Division of Personnel/ Management Services employee. If the employee states he or she is leaving, encourage him or her to stay until he or she can talk to a knowledgeable DOP/ MS consultant.

#### **4. Reasonable Suspicion Testing**

##### a. What is Reasonable Suspicion Testing?

This discussion of reasonable suspicion testing is from 49 CFR 382.307: *Reasonable suspicion testing*: "(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. (b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion

exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.”

b. Training Supervisors for Reasonable Suspicion Testing

Under federal regulations, observations for drug and alcohol reasonable suspicion testing must be made by a supervisor or company official who is trained to make an informed determination that reasonable suspicion exists. The FHWA issued a clarification in the March 1996 Federal Register stating that all supervisors of CDL employees are to receive at least 60 minutes of training on identifying the signs and symptoms of alcohol use and at least an additional 60 minutes of training on identifying the signs and symptoms of drug misuse.

The DPMs are responsible for ensuring that all supervisors of CDL positions receive the required training. The training includes the physical, behavioral, speech, and performance indicators of probable alcohol use and drug misuse.

Training is usually provided through a videotape accompanied by a training manual. After viewing the videotape, supervisors complete and return a test (they may refer to the manual in completing the test). The completed test is retained in the supervisor’s personnel file as verification that the supervisor has completed the training. The contractor also provides one supervisor drug awareness training class in Anchorage each year.

Although trained for reasonable suspicion observation, supervisors should not take any action with an employee before consulting the DPM.

c. When Employees Are Subject to Reasonable Suspicion Testing

All department employees who are required to obtain, hold, or use CDLs as a condition of employment are considered to be performing safety-sensitive functions, or about to perform safety-sensitive functions, at any time they are on duty. This means they are subject to reasonable suspicion testing for alcohol or drugs at any time they are on duty.

An employee is required to submit to a drug or alcohol test when at least one trained supervisor has reasonable suspicion that the employee has violated the drug or alcohol prohibitions. In addition, all supervisors,

whether trained or not, have an obligation to act if any employee, whether a CDL holder or not, appears to be under the influence of drugs or alcohol.

d. Scheduling the Employee for Reasonable Suspicion Testing

When reasonable suspicion exists, the supervisor must immediately remove the employee from safety-sensitive functions. Once the employee has provided the required specimens, the supervisor must not permit the employee to return to duty if he or she appears unfit for duty.

At the supervisor's earliest convenience and before taking any disciplinary action, the supervisor contacts the DPM or that person's backup.

The supervisor, with the assistance of the DPM if necessary, contacts the local collection site and schedules an immediate appointment for testing. If there is no local collection site, or if the incident occurs outside the collection site's normal business hours, the supervisor contacts the testing contractor for immediate assistance. Supervisors will not permit the employee to drive to or from the collection site.

The supervisor must prepare a written record of the observations that led to requiring the testing. The supervisor may use the Supervisor's Reasonable Suspicion Observation Checklist for this purpose. The checklist is Attachment D of this P&P. This particular form is not required, but if another format is used, then the same information and signatures that appear on the checklist must be provided. This record must be made and signed by the supervisor who made the observations within 24 hours of the observed behavior or before the results of the testing are released, whichever is earlier.

If reasonable suspicion testing is not administered within two hours following the observation, the supervisor must document the reasons the testing was not promptly administered. The supervisor must continue attempts to administer tests. If testing is not administered within eight hours following the observation, the supervisor ceases attempts to administer tests and documents in writing the reasons the tests were not administered.

The supervisor forwards copies of documentation under confidential cover to the DPM. The documentation is placed in the employee's CDL file.

**5. Post-accident Testing**

a. When Post-accident Testing Is Required

A driver of a commercial motor vehicle is required to undergo post-accident testing for drugs and alcohol as soon as possible following any accident that meets the following conditions:

1. The driver was performing safety-sensitive functions with respect to the vehicle, and the accident involved the loss of human life; or
2. The driver receives a citation within eight hours (for alcohol testing) or 32 hours (for drug testing) of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:
  - Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

If the accident occurred on a nonpublic roadway or at a state-owned airport, where citations are not issued, and the accident involved bodily injury or disabling vehicle damage as described here, the driver is subject to post-accident testing.

This department does not consider routine occurrences such as pulling a stuck vehicle from a ditch or snow berm to be accidents for purposes of determining when post-accident testing is required.

**Testable Accident Quick Reference Table**

<b>Type of accident involved</b>	<b>Citation issued to the CMV driver</b>	<b>Test must be performed by employer</b>
Human fatality.	YES NO	YES YES
Bodily injury with immediate medical treatment away from the scene.	YES NO	YES NO
Disabling damage to any motor vehicle requiring tow away.	YES NO	YES NO
Occurred on nonpublic roadway or state-owned airport. Bodily injury with immediate medical treatment away from the scene.	NO	YES
Occurred on nonpublic roadway or state-owned airport. Disabling damage to any motor vehicle requiring tow away.	NO	YES

b. Employee Responsibilities

If an employee is involved in an accident in a commercial motor vehicle, and the accident meets the conditions described above, the employee will obtain post-accident drug and alcohol testing as soon as possible following the accident. Nothing in these requirements should be taken to mean the employee should not first receive necessary medical care or render whatever assistance might be necessary to others involved in the accident.

c. Supervisor/ Foreman Responsibilities

On notification that a subordinate has been involved in an accident that meets the conditions for testing, the supervisor or foreman must ensure that the employee has been tested or arrange to have the employee tested for drugs and alcohol. The supervisor or foreman initiates testing by contacting the DPM or the state contractor directly. The supervisor or foreman is responsible for the following efforts and documentation:

1. If an alcohol test is not administered within two hours following the accident, document the reasons the test was not promptly administered. Continue efforts to test the employee.
2. If an alcohol test is not administered within eight hours following the accident, cease efforts to test the employee. Document the reasons the test was not promptly administered.
3. If a drug test is not administered within 32 hours following the accident, cease efforts to test the employee. Document the reasons the test was not promptly administered.

The supervisor or foreman forwards a copy of all documentation under confidential cover to the DPM. The documentation is placed in the employee's CDL file.

d. Testing Contractor Responsibility

If the DPM, the supervisor, or the foreman requests assistance from the testing contractor and the contractor is unable to make arrangements or assist in making arrangements to conduct the testing within the allowable time period, the contractor is responsible for documenting the reasons the testing could not be conducted.

## **D. Alcohol Test Results**

An alcohol test is a breath test. The testing device produces immediate results.

### **1. Negative alcohol test result**

If the test results in a breath alcohol content (BAC) of less than .02, the test is considered negative and is reported as such to the DPM.

If a post-accident alcohol test result is negative, the employee may not be returned to safety-sensitive duties until a negative drug test result is received.

### **2. Positive alcohol test result**

If the test results in a BAC of at least .02, the technician conducting the test will immediately contact the DPM listed on the donor referral form, who in turn contacts the employee's immediate supervisor and instructs him or her not to allow the employee to return to duty. The employee is placed on disciplinary leave without pay pending review of disciplinary consequences.

The DPM and other Management Services consultants coordinate all disciplinary consequences, ensure all testing program requirements are met, and ensure the employee's due process rights are respected.

The DPM will assist the employee in locating substance abuse professionals (SAPs) in his or her area. The DPM will advise the employee that federal regulations prohibit any employer from hiring him or her into a position requiring a CDL until he or she has met all recommendations of the SAP.

See the "Return-to-Duty Requirements after a Violation" section above for further discussion.

## **E. Drug Test Results**

A drug test is a urine test. After a specimen is collected, it is forwarded to a certified laboratory where an initial test is performed.

If the test result shows the specimen is below the cutoff levels for marijuana, cocaine, opiates, phencyclidine (PCP), or amphetamines, the test is reported as negative.

If the specimen is above the cutoff levels for these drugs or drug classes, a second procedure is performed using gas chromatography/ mass spectrometry. If the initial readings are confirmed by the second procedure, the test is reported as positive.

If the test result shows creatinine and specific gravity values lower than expected for human urine, the test is reported as a negative dilute. A negative dilute result typically occurs when the individual has consumed a large volume of water before providing the specimen.

**1. Negative drug test result**

If the result of the drug test is negative, there is no further action under this P&P. However, in the case of reasonable suspicion testing, the employee may be subject to disciplinary actions under the appropriate bargaining agreement.

**2. Positive drug test result**

If the result of the drug test is positive, the laboratory refers the result to a medical review officer (MRO). The MRO attempts to verify the positive result by (1) reviewing the specimen's chain of custody document to ensure it is complete and sufficient and (2) discussing the result with the employee to determine whether there is an alternate medical explanation for the positive test.

The MRO immediately begins attempts to contact the employee and continues attempts for 48 hours or until the employee is contacted. The DPM and the employee's supervisor may be required to assist the MRO in reaching the employee. The supervisor will take guidance from the DPM on how to instruct the employee if reached and will ensure, to the maximum extent possible, the requirement that the employee contact the MRO is held in confidence.

On successfully contacting the employee, the MRO will discuss the test and tell the employee which drug or drugs were found. The MRO will query the employee for relevant information. For example, the positive result may be due to prescription drug use for which the employee has a current prescription and the physician has stated the employee may safely perform safety-sensitive functions while taking the medication in the prescribed amount.

If the MRO is unable to contact the employee within 48 hours, the result is put on a five-day hold. If the MRO does not hear from the employee during the five-day hold, the test result is reported as a non-medically verified positive. The department will proceed with disciplinary action as for a verified positive. If the employee comes forward later with a valid explanation (documented serious illness, injury, or other circumstances unavoidably preventing the employee from contacting the MRO), the MRO will discuss the result with the employee. The MRO may still change the test result to negative if presented with a valid medical explanation for the positive result.

As a result of the discussion with the employee, the MRO may be able to reach an immediate determination or may require access to the employee's medical

records. If the employee does not permit access to his or her medical records, the test result is reported as a non-medically verified positive.

If the MRO determines there is an acceptable explanation for the presence of the drug(s) found in the sample, the test result will be reported to the DPM as negative.

If the MRO determines there is no acceptable explanation for the presence of the drug(s) found in the sample, the test result will be reported as positive. The MRO will inform the employee of his or her rights to request a separate test of the split specimen. Split specimens are discussed below.

On receiving a signed, verified positive drug test result from the MRO, the DPM immediately notifies the employee's supervisor to remove the employee from duty, cautions the supervisor to keep the matter completely confidential, and directs the supervisor to place the employee on disciplinary leave without pay pending an investigative hearing.

The DPM will assist the employee in locating substance abuse professionals (SAPs) in his or her area. The DPM will advise the employee that federal regulations prohibit any employer from hiring him or her into a position requiring a CDL until he or she has met all recommendations of the SAP.

See the "Return-to-Duty Requirements after a Violation" section above for further discussion.

### **3. Negative dilute drug test result**

If the result of the drug test is negative dilute, the DPM will immediately inform the supervisor, who will immediately schedule a new test at the same collection site and immediately refer the employee for the test.

## **F. Split Specimen Testing for Drugs**

### **1. What is a Split Specimen?**

The Federal Highway Administration CDL drug testing program uses a split specimen collection method. At the collection site, the employee is directed to provide at least a 45-milliliter urine specimen. When the employee gives the specimen container to the collector, he or she, under the direct observation of the employee, pours 15 milliliters of the specimen into a separate bottle. Both the primary and secondary (split) specimen are then sealed in the employee's presence and forwarded to the testing laboratory with the chain of custody form.

## **2. Laboratory Split Specimen Storage and Handling**

The laboratory logs in the split specimen, seal intact, and stores the sample securely. If the test result of the primary specimen is negative, the laboratory discards the split specimen. If the test result of the primary specimen is positive or invalid, or if the primary specimen is believed to be adulterated or substituted by the employee, the laboratory retains the split specimen in frozen storage for a minimum of one year -- longer if there is pending litigation. If testing of the split specimen is required, the MRO directs the testing laboratory to forward the sealed split specimen and a copy of the chain of custody form to another laboratory certified by the U.S. Department of Health & Human Services for analysis. The second laboratory analyzes the split specimen to confirm the presence of the drugs found in the primary specimen and retains the unused portion of the specimen.

## **3. Testing the Split Specimen**

If the test result of a primary specimen is positive, the employee may ask that the split specimen be tested. This request must normally be made within 72 hours of the MRO notifying the employee of a verified positive test result. If the employee does not contact the MRO within 72 hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances prevented the employee from contacting the MRO within 72 hours. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO must honor the request.

The contractor informs the DPM that an employee has requested a split specimen test. The contractor monitors the retesting and ensures the DPM is promptly informed of the results.

The second laboratory transmits the result of the split specimen test directly to the MRO. If the split specimen test fails to confirm the original positive result, or if the split specimen is unavailable, inadequate for testing, or untestable, the MRO cancels the test and reports cancellation and the reason for it to the DPM and the employee. All disciplinary actions are reversed and the employee is reinstated.

An employee who has tested positive for drugs may not remain in a safety-sensitive function while awaiting the result of a split specimen test. The investigative hearing and disciplinary actions described previously continue while awaiting the result of the split specimen test.

#### **4. Payment Responsibility**

The employee pays for the split specimen test. However, federal regulations prohibit MROs, laboratories, or employers from holding the split test conditional on prepayment by the employee. As a result, the contractor guarantees payment to the MRO, and the State of Alaska guarantees payment to the contractor. If the employee refuses to pay "up front," the state pays. The DPM will advise the supervisor to take action to withhold the payment from the employee's payroll warrant.

Attachment A: Definitions

Attachment B: Tables of Prohibited Conduct and Disciplinary Consequences

Attachment C: Release of Information Form

Attachment D: Supervisor's Reasonable Suspicion Observation Checklist

#### **AUTHORITY**

49 CFR Part 40 - Administrative Provisions

49 CFR Part 382 - Controlled Substances and Alcohol Use and Testing

#### **IMPLEMENTATION RESPONSIBILITY**

Employees who are required to obtain, hold, or use commercial driver licenses (CDLS) as a condition of employment; supervisors and foremen of employees who are required to obtain, hold, or use CDLS

#### **DISTRIBUTION**

All department employees via the DOT&PF website

## Attachment A

### DEFINITIONS

**Alcohol** - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

**Alcohol use** - The drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication) containing alcohol.

**Collection site** - Local medical clinics, hospitals, or other locations staffed by people who have been trained in the testing and collection procedures required under this program. The state contractor has made arrangements with a large number of these facilities to serve as local collection facilities in as many of the state's duty stations as possible. Some of these facilities are equipped both to perform breath alcohol testing and to collect urine specimens.

**Controlled substances and drugs** – The drugs for which chemical tests are required to detect use under this P&P are marijuana, cocaine, opiates, amphetamines, phencyclidine, and other metabolites. The terms "controlled substance" and "drugs" include legal substances obtained illegally, legal substances used in an unauthorized manner, and legal substances that affect job safety or performance when used as authorized. They terms do not refer to the proper use of controlled substances authorized by law which do not affect job safety or performance.

**Dilute specimen** - A specimen with creatinine and specific gravity values that are lower than expected for human urine.

**Disabling damage** – As applied to a commercial motor vehicle when a driver is involved in an accident covered by the testing regulations, 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.

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

Disabling damage does not include

- (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.
- (ii) Tire disablement without other damage even if no spare tire is available.
- (iii) Headlight or taillight damage.
- (iv) Damage to turn signals, horn, or windshield wipers that makes them inoperative.

**Drug program manager** - The Division of Personnel/ Management Services consultant or designee assigned to receive test results and coordinate CDL drug and alcohol testing. There is one DPM in Anchorage, Fairbanks, and Juneau.

**Drug test** - A chemical test of an individual's urine for evidence of dangerous drug use.

**Intoxicant** - Any form of alcohol, dangerous drug (controlled substance), or combination thereof.

**Medical review officer** - A licensed physician responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

**Negative chemical test for dangerous drugs** - The result of a chemical test conducted in accordance with 49 CFR 40 is reported as negative by a medical review officer in accordance with 49 CFR 40.

**Positive chemical test for dangerous drugs** - The result of a chemical test conducted in accordance with 49 CFR 40 is reported as positive for the presence of dangerous drugs or drug metabolites in an individual's system by a medical review officer in accordance with 49 CFR 40.

**Refuse to submit** - An employee fails to provide a urine sample as required by 49 CFR 40 without a genuine inability to provide a specimen (as determined by medical evaluation), after s/he has received notice of the requirement to be tested in accordance with the provisions of 49 CFR 40, or engages in conduct that clearly obstructs the testing process.

**Safety-sensitive functions** - Within DOT&PF, all positions requiring a commercial driver license (CDL) perform safety-sensitive functions. Briefly, 49 CFR Section 382.107 defines safety-sensitive functions to include driving, loading, repairing, or servicing commercial motor vehicles, supervising these activities, or getting ready to do these activities. The department considers all CDL holders to be performing safety-sensitive functions, or about to perform safety-sensitive functions, anytime they are on duty, regardless of whether they use their CDLs on a daily basis or sporadically.

**Substance abuse professional (SAP)** - A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

**Under the influence** - The employee is affected by a drug or combination of drugs and alcohol, in any detectable manner. The symptoms of influence are not confined to

those consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of influence can be established by a professional opinion, a scientifically valid test, and in some cases, by a layperson's opinion.

**Attachment B**

**TABLES OF PROHIBITED CONDUCT AND DISCIPLINARY CONSEQUENCES**

**Table 1 – Controlled Substances (Drugs other than Alcohol)**

<b>PROHIBITED CONDUCT</b>	<b>DISCIPLINARY CONSEQUENCE</b>
A. Positive test result for controlled substance, including positive result for post-accident test.	A. Split specimen sample may be tested at an employee's option and expense. Request must be made within 72 hours of receipt of a positive test result by medical review officer. Any employee testing positive will be suspended for a minimum of 90 days. See P&P for conditions on return to work. Any employee who tests positive a second time will be dismissed.
B. Refusing to participate in required testing, including required post-accident tests.	B. Refusing to participate is treated as a positive test result. Any employee who refuses to participate in required testing will be subject to the disciplinary consequences in "A" above.
C. Attempting to adulterate, tamper with, or modify the sample or test result.	C. Any employee who attempts to adulterate, tamper with, or modify the sample or test result will be immediately dismissed for cause.
D. Use of a controlled substance on duty. This means reporting to work, working, or acting or appearing on behalf of the state while under the influence of drugs.	D. Any employee using a controlled substance on duty will be immediately dismissed for cause.
E. Criminal conviction for drug offense.	E. Any employee who is convicted of a drug offense will be immediately dismissed upon conviction.
F. Failing to notify the supervisor or foreman of any arrest or conviction under any criminal federal, state, or local drug law or statute by the next workday following the arrest or conviction.	F. Failing to notify will result in disciplinary action up to and including dismissal. When failing to report could cause serious consequences to the employer, it may result in immediate dismissal.

Table 2 – Alcohol

PROHIBITED CONDUCT	DISCIPLINARY CONSEQUENCE
A. Blood alcohol concentration (BAC) of 0.04 or greater immediately prior to, following, or during performance of CDL duties. <sup>1</sup>	A. Any employee whose BAC is 0.04 or greater immediately prior to, following, or during the performance of CDL duties will be immediately dismissed for cause.
B. BAC of at least 0.02 but less than 0.04 immediately prior to, following, or during performance of CDL duties. <sup>1</sup>	B. <b>First Violation</b> – Suspended for a minimum of 90 days. See P&P for conditions on return to work. <b>Second Violation</b> -- Dismissal for cause.
C. Use of alcohol within 4 hours prior to reporting for duty or performing state work of any kind.	C. <b>First Violation</b> -- Suspended for a minimum of 90 days. See P&P for conditions on return to work. <b>Second Violation</b> -- Dismissal for cause.
D. Use of alcohol on duty. This means reporting to work, working, or acting or appearing on behalf of the state while under the influence of alcohol.	D. Any employee using alcohol on duty will be immediately dismissed for cause.
E. Refusing to participate in required testing, including required post-accident tests.	E. Refusing to participate is treated as a positive test result. Any employee who refuses to participate in required testing will be subject to the disciplinary consequences in “B” above.
F. Attempting to adulterate, tamper with, or modify the sample or test result (including false claims of inability to test).	F. Any employee who attempts to adulterate, tamper with, or modify the sample or test results will be immediately dismissed for cause.
G. Following an accident, consumption of alcohol within 8 hours or until the employee has been tested for alcohol (whichever comes first).	G. Any employee who consumes alcohol prior to being tested for alcohol within 8 hours of an accident will be immediately dismissed for cause.
H. Failing to notify the supervisor or foreman of any arrest or conviction under any criminal federal, state, or local alcohol law or statute by the next workday following the arrest or conviction.	H. Failing to notify will result in disciplinary action up to and including dismissal. When failing to report could cause serious consequences to the employer, it may result in immediate dismissal.

<sup>1</sup> This department considers CDL holders to be performing CDL duties, or about to perform CDL duties, any time they are on duty, regardless of whether they use their CDLs on a daily basis or sporadically.

### Attachment C

#### “Release of Information Form -- 49 CFR Part 40 Drug and Alcohol Testing”

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

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

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

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

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

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

**I-A.**  
New Employer Name: \_\_\_\_\_ State of Alaska, Department of Transportation and Public Facilities \_\_\_\_\_

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

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

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

**I-B.**  
Previous Employer Name: \_\_\_\_\_

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

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

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

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

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

- |   |                  |
|---|------------------|
| 1. Did the employee have alcohol tests with a result of 0.04 or higher?                       | YES ____ NO ____ |
| 2. Did the employee have verified positive drug tests?  | YES ____ NO ____ |
| 3. Did the employee refuse to be tested?  | YES ____ NO ____ |
| 4. Did the employee have other violations of DOT agency drug and alcohol testing regulations? | YES ____ NO ____ |

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

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

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

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

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

**II-B.**

Name of person providing information in *Section II-A*: \_\_\_\_\_

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

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

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

<h2 style="text-align: center;">Supervisor's Reasonable Suspicion Observation Checklist</h2>
--

Employee's Name \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_

Employer/Department \_\_\_\_\_

The above named employee was observed by me to exhibit the following problems. (Check one or more that describe the employee's behavior.)

- |   |  |
|---|--|
| <input type="checkbox"/> Possessing, dispensing, or using controlled substance              | <input type="checkbox"/> Dry mouth (frequent swallowing/lip wetting) |
| <input type="checkbox"/> Slurred or incoherent speech                                       | <input type="checkbox"/> Dizziness or fainting                       |
| <input type="checkbox"/> Unsteady gait or other loss of physical control; poor coordination | <input type="checkbox"/> Shaking hands or body tremors/twitching     |
| <input type="checkbox"/> Dilated or constricted pupils or unusual eye movement              | <input type="checkbox"/> Unusually aggressive behavior               |
| <input type="checkbox"/> Bloodshot or watery eyes   | <input type="checkbox"/> Unexplained change in mood                  |
| <input type="checkbox"/> Extreme fatigue or sleeping on the job.                            | <input type="checkbox"/> Unexplained work related accident or injury |
| <input type="checkbox"/> Excessive sweating or clamminess to the skin                       | <input type="checkbox"/> Irregular or difficult breathing            |
| <input type="checkbox"/> Flushed or very pale face  | <input type="checkbox"/> Runny sores or sores around nostrils        |
| <input type="checkbox"/> Nausea or vomiting   | <input type="checkbox"/> Inappropriate wearing of sunglasses         |
| <input type="checkbox"/> Odor of alcohol  | <input type="checkbox"/> Puncture marks or "tracks"                  |
| <input type="checkbox"/> Odor of marijuana  | <input type="checkbox"/> Highly excited or nervous                   |
| <input type="checkbox"/> Other (please specify)   | <input type="checkbox"/> Unsafe action                               |

