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Substance Abuse Testing for Drivers	ACA Standards: 2-CO-1C-20, 5-ACI-1C-16, 4-ACRS-7C-02, 4-APPFS-3C-01		
Steven Harpe, Director Oklahoma Department of Corrections		Signature on File	

Controlled Substances and Alcohol Use and Testing Procedures for Drivers of Commercial Motor Vehicles

The United States Department of Transportation rules and regulations (49 CFR Part 382, et al., 49 CFR Part 40) require implementation of a controlled substance and alcohol use testing program to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles. (2-CO-1C-20,

5-ACI-1C-16, 4-ACRS-7C-02, 4-APPFS-3C-01)

I. Definitions

A. Commercial Motor Vehicles

A commercial motor vehicle is defined as:

1. Having a gross vehicle weight rating of 26,001 or more pounds; or

2. Designed to transport 16 or more passengers, including the driver.

B. Affected Employees

All employees whose assigned job duties include driving a commercial motor vehicle are subject to the controlled substances and alcohol-testing program specified by these procedures.

C. Prohibited Substances (5-ACI-1C-16 b#1, b#2, 4-ACRS-7C-02 b#1, b#2, 4-APPFS-3C-01 b#1, b#2)

1. Alcohol

A concentration of .04 or more of any intoxicating agent in beverage alcohol.

2. Controlled Dangerous Substance

a. Marijuana metabolites (i.e., THCA), regardless of whether or not it is derived from medical marijuana;

b. Cocaine metabolites (i.e., Benzoylecgonine);

c. Opiate metabolites (Codeine/Morphine) including Heroin;

d. 6-Acetylmorphine (6-AM);

e. Phencyclidine (PCP);

f. Amphetamines/Methamphetamine (AMP/MAMP); and

g. Methylenedioxymethamphetamine (MDMA – a.k.a. Ecstasy).

D. Refusal to Submit to Testing

Refusal to submit to testing is defined as:

1. Failing to provide sufficient breath or urine for testing; or

2. Engaging in any conduct that obstructs the testing procedure.

E. Medical Review Officer (MRO)

The agency will contract with a licensed physician, certified by a recognized MRO authority, for receiving and interpreting laboratory results generated by the controlled substance and alcohol testing program.

F. Substance Abuse Professional

1. A licensed physician;

2. A licensed or certified psychologist, social worker, or employee assistance professional;

3. A state licensed or certified marriage and family therapist; or drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission or the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Masters Addictions Counselor (NBCC) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

G. Local Drug-Free Workplace Coordinator

An employee designated by their facility/unit to coordinate controlled substance and alcohol testing.

II. Prohibited Conduct (5-ACI-1C-16, 4-ACRS-7C-02, 4-APPFS-3C-01)

A. Drivers

1. Alcohol

No driver will:

a. Report for duty or remain on duty while having an alcohol concentration of .04 or greater;

b. Operate a commercial motor vehicle while in possession of, or while using alcohol; (5-ACI-1C-16, b#2)

c. Operate a commercial motor vehicle within four hours after using alcohol;

d. Use alcohol for eight hours following any accident requiring a post-accident test or until tested; or

e. Refuse to submit to any random, post-accident, or for-cause test required by this procedure.

2. Controlled Substances (5-ACI-1C-16 b#1, 4-ACRS-7C-02 b#1, 4-APPFS-3C-01 b#1)

No driver will:

a. Report for duty or remain on duty when the driver uses any controlled substance except when the use is pursuant to a physician's instructions, and the use does not adversely affect the safe operation of the motor vehicle;

b. Operate a commercial motor vehicle if the driver tests positive for controlled substances; or

c. Refuse to submit to any random, post-accident, for-cause or pre-employment test required by this procedure.

Drivers are required to notify their supervisors of any prescribed medications which could affect their ability to perform job duties safely in accordance with OP-110215 entitled "Rules Concerning the Individual Conduct of Employees."

B. Supervisors of Drivers

No supervisor will knowingly permit an employee to perform driving duties if the employee:

1. Has an alcohol concentration of .04 or greater; is driving while using or in possession of alcohol, or has used alcohol within four hours;

2. Refuses to submit to any random, post-accident, for-cause or follow-up test required by this procedure; or

3. Has used, or tests positive for, controlled substances other than specified in Section II. A. 2. item a. of this procedure.

III. Required Testing (5-ACI-1C-16, b#3, 4-ACRS-7C-02, 4-APPFS-3C-01)

Each facility/unit drug free workplace coordinator will work with the controlled substance and alcohol testing program's contracted vendor to ensure that employees and applicants are directed to report for testing at the appropriate date, time, and location.

A. Pre-Employment Testing (5-ACI-1C-16 b#3, b#5, 4-ACRS-7C-02 b#3, b#5, 4-APPFS-3C-01 b#3, b#5)

1. All applicants and employees being considered for job positions or assignments requiring the driving of a commercial motor vehicle will be tested for controlled substances with confirmed results prior to being hired, transferred, or assigned such position or job duties.

2. All applicants being considered for job positions or assignments requiring the driving of a commercial motor vehicle will provide consent to the Federal Motor Carrier Safety Administration's Clearinghouse program by completing the "Commercial Driver's License (CDL) Clearinghouse Consent Form" (Attachment B, attached).

3. Applicants who refuse a controlled substance test, refuse to consent to the Clearinghouse program, or who test positive for controlled substances, will be denied employment. (5-ACI-1C-16 b#5, 4-ACRS-7C-02 b#5, 4-APPFS-3C-01 b#5)

B. Random Testing (5-ACI-1C-16 b#3, 4-ACRS-7C-02 b#3, 4-APPFS-3C-01 b#3)

1. Employees will be subject to unannounced alcohol and controlled substances testing in accordance with a scientifically valid, randomly generated schedule, with testing dates spread reasonably throughout the year. Of the affected employees, 50% will be tested for controlled substances and ten percent for alcohol during each 12-month period.

2. The facility/unit will provide an updated list of the affected employees upon request from the Central Human Resources unit.

3. Employees notified of selection for random testing will proceed to the test site immediately; however, random tests for alcohol will be administered either immediately before, during, or immediately after the employee performs assigned driving duties.

C. Post-Accident Testing

Employees will be tested for both controlled substances and alcohol as soon as it is practical following any accident in which they were the driver of a commercial motor vehicle.

Employees will be readily available for such testing and failure to do so will be considered a refusal to submit to testing. The results of a breath or blood test for alcohol or a urine test for controlled substances, conducted by federal, state, or local officials and obtained by the facility/unit, may be used

for the purposes of fulfilling the requirements of post-accident testing. (5-ACI-1C-16 b#3, 4-ACRS-7C-02 b#3, 4-APPFS-3C-01 b#3)

1. Testing Requirements (5-ACI-1C-16 b#3, 4-ACRS-7C-02 b#3, 4-APPFS-3C-01 b#3)

   a. Alcohol

      If a test for alcohol is not administered within two hours following the accident, the facility/unit will prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within eight hours following the accident, the facility/unit will cease attempts to administer and prepare and maintain the same record.

   b. Controlled Substances

      If a test for controlled substances is not administered within 32 hours following the accident, the facility/unit will cease attempts to administer and prepare and maintain on file a record stating the reasons the test was not promptly administered.

D. <u>For-cause Testing</u> (5-ACI-1C-16 b#3, 4-ACRS-7C-02 b#3, 4-APPFS-3C-01 b#3)

For-cause testing may only be conducted following specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an employee by a trained supervisor or manager in accordance with Section III. D. item 3. of this procedure.

Reasonable belief that controlled substances have been used may include observations of the chronic and withdrawal effects of controlled substances.

1. Guidelines for Alcohol Testing (5-ACI-1C-16 b#3, 4-ACRS-7C-02 b#3, 4-APPFS-3C-01 b#3)

   a. For-cause alcohol testing may only be conducted if the observations about the employee are made during, immediately before, or immediately after performing driving duties.

   b. If an alcohol test is not administered within two hours following a determination of reasonable belief, the facility/unit will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight hours, no test will be taken,

and a record will be made of the reasons for not administering the test.

c. Regardless of whether a test has been administered, no employee will be permitted to perform driving duties when reasonable belief exists of alcohol misuse. Following such reasonable belief, no employee will be permitted to drive until either twenty-four hours has elapsed or a test confirms less than .02% alcohol concentration. (5-ACI-1C-16 b#5, 4-ACRS-7C-02 b#5, 4-APPFS-3C-01 b#5)

2. Guidelines for Controlled Substances Testing (5-ACI-1C-16 b#3, 4-ACRS-7C-02 b#3, 4-APPFS-3C-01 b#3)

A written report, detailing the reasons for for-cause testing, "For-cause Report Form" (OP-110602, Attachment B) will be completed within 24 hours of the observed behavior.

3. Procedure for Requesting For-cause Testing (5-ACI-1C-16 b#3, 4-ACRS-7C-02 b#3, 4-APPFS-3C-01 b#3)

Any supervisor or manager who has completed the required Drug-Free Work Place training may request an employee to undergo for-cause testing for controlled substance and alcohol by completing a "For-cause Report Form" (OP-110602, Attachment B) and submitting it to the facility/unit head. A completed copy will be faxed to the Central Human Resources unit Drug-Free Work Place Coordinator , in accordance with Section IV. item A. of this procedure.

If the facility/unit head concurs, the employee will be notified of the decision and immediately transported/accompanied to the testing site.

IV. Controlled Substance Testing Procedures

All controlled substance and alcohol testing and records related to controlled substance and alcohol testing will be conducted and maintained in accordance with applicable federal guidelines by qualified personnel with whom the agency has contracted.

No agency employee will conduct controlled substance or alcohol testing of another agency employee.

A. Procedures for Test Referral

1. The Central Human Resources unit will provide all affected facilities/units and divisions with a complete listing of the controlled substance and alcohol collection sites.

2. Applicants and employees will be required to report to the testing site in accordance with this procedure.

3. The Central Human Resources unit will schedule the test:

   a. The employee's printed name;

   b. Job code;

   c. Identification number;

   d. The collection site (including the address of the collection site where the employee is to report);

   e. The type of test (all forms completed in accordance with this procedure will indicate DOT testing);

   f. Reason for test;

   g. The date and time the employee was notified to report to the collection site;

   h. Date and time the employee is to report to the collection site; and

   i. The signature of the local drug-free workplace coordinator.

4. An ePassport will be provided to the employee to take to the collection site. A copy will also be immediately sent by email to the Central Human Resources unit.

B. <u>Testing</u>

All procedures for controlled substance and alcohol testing, to include types of tests conducted, collection, storage and chain of custody, and maintenance and dissemination of testing records will conform to all applicable federal guidelines.

1. Controlled Substance Testing

   a. The "split sample" method of collection will be used, and all specimens identified as positive on the initial screening (immunoassay) test will be confirmed using gas chromatography/mass spectrometry techniques.

   b. The MRO will review confirmed positive results, examine alternative medical explanations for any positive test result, and provide affected employees with an opportunity to

discuss the test results prior to making a final decision to verify a test result as positive and notify the Central Human Resources unit of the final result.

c. Any employee notified by the MRO of a verified positive test result will have 72 hours to request that the split specimen be tested in a different certified laboratory. If the second test is positive, the employee will pay for the testing. If the second test is negative, the agency will pay for the testing and disregard the results of the first test.

2. Alcohol Testing

All screening and confirmation tests will use an evidential breath testing (EBT) device that meets federal requirements. In the event that a screening test results in a breath alcohol concentration of less than .02% no further testing is authorized. Confirmation tests will be performed for any results .02% or greater. If the results are greater than .02%, guidelines in accordance with Section V. items B. and C. of this procedure will be followed.

Following completion of a test, the employee will be shown the result displayed on the EBT device.

In the event that the alcohol test results in a breath alcohol concentration of .02% or greater, the facility will be notified to provide transportation for the affected employee.

V. Post Testing Procedures

A. Referral to the Employee Assistance Program (EAP) (5-ACI-1C-16 b#4, 4-ACRS-7C-02 b#4, 4-APPFS-3C-01 b#4)

Any employee who has a confirmed positive test result will be referred to EAP for referral to a substance abuse professional. (5-ACI-1C-16 b#4, 4-ACRS-7C-02 b#4, 4-APPFS-3C-01 b#4)

B. Return to Duty/Alcohol

Employees will be returned to work following an alcohol test with results of less than .02%. Employees with alcohol test results of .02% and greater, but less than .04% may return to duty after 24 hours has elapsed. Leave will be charged to an appropriate leave program in accordance with OP-110355 entitled “Procedures for Employee Attendance and Leave.”

C. Disciplinary Action (2-CO-1C-20, 5-ACI-1C-16 b#5, 4-ACRS-7C-02 b#5, 4-APPFS-3C-01 b#5)

1. Termination

Employees may be terminated for engaging in prohibited conduct to include:

a. Any confirmed and verified positive test for controlled substances, which is either unchallenged or reconfirmed by the split specimen;

b. Any positive test result for alcohol at a level of .04% or greater;

c. Any refusal to test or any conduct which interferes with or obstructs the testing process such as unreasonable delay in reporting to the testing site;

d. Any attempted adulteration or substitution of a specimen; or

e. Any failure to produce a specimen within three hours after request.

All terminations will be in accordance with OP-110415 entitled "Progressive Disciplinary Procedures" and applicable Civil Service and Personnel Administration Rules.

2. Leave Status Pending Disciplinary Action

Following a confirmed positive test, employees will be placed on suspension with pay in accordance with applicable Civil Service and Personnel Administration Rules.

VI. Confidentiality and Retention of Records

A. Records

All records pertaining or related to the controlled substance and alcohol testing program will be maintained in a secure location in the Central Human Resources unit with limited access. No records of driver information will be released, except for the following:

1. An affected employee is entitled, upon written request, to obtain copies of any records pertaining to that employee's use of alcohol or controlled substances, including test results, and to have those records furnished to a subsequent employer or to any other person as directed by specific written consent.

2. Records will be released in accordance with federal regulations to all appropriate regulatory agencies.

3. Any information or records may be released as a result of any lawsuit, conflict resolution or other action initiated by the affected employee or as a result of any action based on the agency's determination that prohibited conduct has occurred, such as disciplinary action, substance abuse referral, or workers' compensation claim, etc.

4. Records Retention

   a. Negative controlled substance tests and alcohol test results of less than .02% will be maintained for a period of one year.

   b. Positive controlled substance tests, alcohol test results of .02% or greater and records of refusals to test will be maintained for a period of five years or longer if legal action is pending.

   c. Disposition will be in accordance with the Department of Libraries records destruction schedule.

VII. Notification of Test Results

The Central Human Resources unit will notify the facility/unit of test results.

A. Pre-employment Testing

The facility/unit will notify an applicant/employee of the results of any controlled substance test if the applicant/employee has made a request within 60 days of being notified of the results of the hiring, promotion, or transfer decision.

B. Random, For-cause and Post Accident Testing

The facility/unit will notify employees of any positive test results for controlled substances and the substance(s) that were verified positive.

VIII. Requirements for Disseminating Information and Training

A. Dissemination of Information

1. Educational Materials/Operational Procedure

   All employees subject to this procedure or subsequently hired or transferred into positions subject to this procedure will receive printed information explaining the federal requirements for this mandatory drug and alcohol testing program and a copy of this procedure. Employees will sign a "Controlled Substance/Alcohol Testing for Commercial Motor Vehicles Memorandum and Certificate

of Receipt" (Attachment A, attached) for both materials and procedures (to include any revisions issued), the original certificate will be retained in the employee's personnel file and a copy will be provided to the employee (49 CFR § 382.601).

2. Job Postings/Post Orders

All job announcements and post orders for positions that include driving a commercial motor vehicle will include the requirements for drug and alcohol testing.

B. Training

All supervisors/managers are responsible for determining whether reasonable suspicion exists to require drug or alcohol testing and will be required to complete a 60 minute training on alcohol misuse and a 60 minute training on controlled substance abuse administered by the Central Human Resources unit.

IX. References

Policy Statement P-110300 entitled "Drug-Free Workplace Program"

OP-110215 entitled "Rules Concerning the Individual Conduct of Employees"

OP-110355 entitled "Procedures for Employee Attendance and Leave"

OP-110415 entitled "Progressive Disciplinary Procedures"

OP-110602 entitled "For-cause Drug and Alcohol Testing Program"

49 CFR Part 40

49 CFR Part 382 et al.

49 CFR § 382.601

Federal Motor Carrier Safety Administration Regulations, Part 382.303

Department of Libraries General Records Disposition Schedule

X. Action

The chief administrators are responsible for compliance with this procedure.

The administrator of Human Resources is responsible for the annual review and revisions.

Any exception to this procedure will require prior written approval from the agency director.

This procedure is effective as indicated.

Replaced: OP-110601 entitled "Controlled Substances and Alcohol Use and Testing Procedures for Drivers of Commercial Motor Vehicles" dated October 22, 2021

Deleted: OP-110601 Revision-01 dated January 19, 2022

Distribution: Policy and Operations Manual
Agency Website

Attachments	Title	Location
Attachment A	"Controlled Substance/Alcohol Testing for Commercial Motor Vehicles Memorandum and Certificate of Receipt"	Attached
Attachment B	"Commercial Driver's License (CDL) Clearinghouse Consent Form"	Attached
Attachment B	"For-cause Report Form"	OP-110602
Attachment C	"Authorization for Examination and Testing"	OP-110602