HR/LR Policy and Procedure #1418A

State of Minnesota Drug and Alcohol Testing Plan: Subject to Federal DOT Regulations

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Authority: Enterprise Employee Resources

OVERVIEW

Objective

To comply with federal regulations and to provide a drug-free work environment.

Policy Statement

State agencies must comply with all applicable federal regulations to eliminate the impact of the misuse of drugs and alcohol in the workplace by state agency employees who operate a commercial motor vehicle and are required to have a commercial driver's license (CDL).[1]

Scope

This plan covers employees of executive branch agencies, as defined in Minnesota Statutes, section 43A.02, subdivision 22, Minnesota State Retirement System, Public Employees Retirement Association, and Teachers Retirement Association, who are subject to federal Department of Transportation (DOT) regulations because they:

- operate a commercial motor vehicle and are required to have a CDL to perform the assigned duties of their position; or
- operate a commercial motor vehicle and are required to have a CDL to perform safety sensitive functions in addition to or in place of the duties of their regular position.

[1] Marijuana (cannabis) is a drug listed in Schedule I of the federal Controlled Substances Act. The U.S. Department of Transportation "Recreational Marijuana" Notice provides that it remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation's drug testing regulations to use marijuana.

Definitions and Key Terms

Accident

An event which resulted in the loss of human life; or the issuance of a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

1. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

2. 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.

Commercial Motor Vehicle

A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

1. Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds);

2. Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds);

3. Is designed to transport 16 or more passengers, including the driver; or

4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placed under the Hazardous Materials Regulations.

Controlled Substances

Substances identified in 49 CFR section 40.85. DOT agency drug testing programs require that employers test for marijuana/cannabis, cocaine, opiates, amphetamines, and phencyclidine.

Covered Employee (Covered Position)

An employee, required to hold a commercial driver's license (CDL), to perform the assigned duties of their position or to perform safety sensitive functions in addition to or in place of the duties of their regular position.

Designated Employer Representative (DER)

The person who is identified and authorized by the employer to:

1. Receive drug test results and other drug test-related communications for the employer.

2. Take immediate action(s) to remove employees from safety sensitive duties.

3. Make required decisions in the drug testing and evaluation process.

4. Facilitate required decisions in the selection of a third-party administrator for testing.

Service Agent

A service agent is a third-party entity or person that provides specialized services to employers and employees, helping them comply with drug and alcohol testing regulations, i.e. specimen collectors, breath alcohol technicians, Medical Review Officers, substance abuse professionals, etc.

Service agents cannot act as DERs.

Disabling Damage

Damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

1. Inclusions
    a. Damage to motor vehicles that could have been driven but would have been further damaged if so driven.
2. Exclusions
    a. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
    b. Tire disablement without other damage even if no spare tire is available.
    c. Headlight or taillight damage.
    d. Damage to turn signals, the horn, or windshield wipers which make them inoperative.

DOT

United States Department of Transportation

Driver

Any person who operates a commercial motor vehicle. This includes, but is not limited to:

1. Full time regularly employed drivers.
2. Casual, intermittent or occasional drivers.
3. Leased drivers, those who are not full-time regular employees or are those provided by a temporary staffing agency.
4. Independent, owner operator contractors.

Employer

As used in this plan refers to the employing state agency of the covered employee.

Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Clearinghouse

A secure, online database that gives employers and other authorized users real-time information about commercial driver's license (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations.

Medical Review Officer (MRO)

A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Performing (a safety-sensitive function)

A driver is performing a safety-sensitive function during any period in which they are actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Refuse to Submit (to an alcohol or controlled substances test)

1. Fails to appear for any test, within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer.

2. Fails to remain at the testing site until the testing process is complete.

3. Fails to provide a urine specimen for any drug test required by this plan.

4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen.

5. Fails to provide enough urine when directed and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.

6. Fails or declines to take a second test directed by the employer or collector.

7. Fails to undergo a medical examination or evaluation as directed by the MRO as part of the verification process or as directed by the DER. In the case of a pre-employment drug test, the job candidate is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test.

8. Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process).

9. Has a test reported by the MRO as a verified adulterated or substituted test result.

10. Fails to provide an adequate amount of saliva or breath for any alcohol test required with no adequate medical explanation for the failure.

11. Fails to sign the certification at Step 2 of the Alcohol Testing Form.

Safety-Sensitive Function

All time from when a driver begins to work or is required to be ready to work until the time they are relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

1. All time at an employer or shipper plant, terminal, facility, or other property or any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

2. All time inspecting equipment as required by federal regulations or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

3. All time spent at the driving controls of a commercial motor vehicle in operation;

4. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending to a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
6. All time repairing obtaining assistance or remaining in attendance upon a disabled vehicle.

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GENERAL STANDARDS AND EXPECTATIONS

I. Designated Employer Representative (DER)

Each agency must assign a Designated Employer Representative (DER) who is responsible for the administration of this program for their agency. The DER is available to answer questions regarding the Drug and Alcohol Testing Plan. Agencies must designate a back-up resource for the DER. Refer to Attachment B of this plan for a list of DERs.

II. Third Party Administrator

Not all state agencies are required to use a single, exclusive drug testing vendor, although they are expected to use master contracts established by the Department of Administration. The Office of State Procurement (OSP) offers MMCAP Infuse contracts which include comprehensive drug screening products, laboratory analysis and specimen collection. See the (MMCAP) resource document in the REFERENCES section of this policy for third party administrator information.

III. Medical Review Officers (MRO)

A medical review officer (MRO) provides quality assurance for the testing process and provides medical review of an employee's test results. MRO duties and determinations must fully comply with 49 C.F.R. Part 40, and the federal Department of Transportation's Final Rule.

See the (MMCAP) resource document in the REFERENCES section of this policy for MRO information.

IV. DHHS/SAMHSA Approved Laboratories

All testing is performed by a DHHS/SAMHSA Approved Laboratory: See the (MMCAP) resource document in the REFERENCES section of this policy for testing laboratory information.

V. Substance Abuse Professional (SAP) Services

When an employee has violated federal drug and alcohol regulations, including a DOT drug and alcohol regulation, that employee cannot again perform any safety-sensitive duties until and unless the employee completes an evaluation, referral, and education/treatment process as directed by a Substance Abuse Professional (SAP). A verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT regulation constitutes a DOT drug and alcohol regulation violation.

An employer must provide each applicant and employee who violates a DOT drug or alcohol regulation, a listing of SAPs readily available to the employee and acceptable to the employer, with names, addresses, and telephone numbers.

Initial SAP referral shall be at no charge to the employee.

Neither the employee nor the employer shall seek a second SAP evaluation if the employee has already been evaluated by a qualified SAP.

VI. Employee Assistance Program

The State Employee Assistance Program (EAP) LifeMatters provides confidential consultation for concerns including both work and non-work-related issues.

EAP services can be accessed toll-free in greater Minnesota at 1-800-657-3719. In the metro area, please call 651-259-3840 (MN Relay Service 711).

VII. Prohibited Driver Conduct

Under the State's independent authority, any driver who engages in the prohibited conduct listed below will be subject to disciplinary action, up to and including discharge. On an employee's first confirmed positive result on a random, post-accident, reasonable suspicion test, or refusal to be tested, the employee shall not be discharged if the employee successfully completes an evaluation, referral, and education/treatment process recommended by a SAP.

Alcohol Concentration

1. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

2. If the employer has knowledge that a driver has an alcohol concentration of 0.04 or greater, the employer shall not permit the driver to perform or continue to perform safety-sensitive functions.

On-Duty Use

1. No driver shall use alcohol while performing safety-sensitive functions.

2. If the employer has actual knowledge that a driver is using alcohol while performing safety-sensitive functions, the employer shall not permit the driver to perform or continue to perform safety-sensitive functions.

Pre-Duty Use

1. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol.

2. If the employer has actual knowledge that a driver has used alcohol within four (4) hours, the employer shall not permit the driver to perform or continue to perform safety-sensitive functions.

Use Following an Accident

1. No driver required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident, or until they undergo a post-accident alcohol test, whichever occurs first.

Refusal to Submit to a Required Alcohol or Controlled Substances Test

2. No driver shall refuse to submit to a pre-employment-controlled substance test or a post-accident, random, reasonable suspicion, return-to-duty or follow-up alcohol or controlled substance test.

3. The employer shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

4. For an explanation of what constitutes a refusal to submit, refer to the "Definitions" section, above.

Controlled Substance Use

1. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any Schedule I controlled substance.

2. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any non-Schedule I controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who is familiar with driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

3. No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

4. An employer may require a driver to inform the employer of any therapeutic drug use.

Controlled Substances Testing

1. No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.

2. No employer having knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

VIII. Specimen Collection and Chain of Custody Procedures

Controlled Substances Testing

1. Only those authorized to collect urine specimens for DOT drug testing may do so.

2. Security measures will be taken at the collection site to prevent unauthorized access that could compromise the integrity of the collection process or the specimen. Chain of custody procedures will be followed by authorized collection site personnel.

3. The procedures for collection of a specimen shall allow individual privacy unless there is reason to believe that an individual may alter or substitute the specimen provided. Except in the case of an observed collection, no one may go into the room with the employee while the employee provides a urine specimen.

4. An employer must direct an immediate collection under direct observation with no advance notice to the employee if:
    a. The laboratory reported to the MRO that a specimen is invalid, and the MRO reported that there was not an adequate medical reason for that result;
    b. The MRO reported that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or
    c. The laboratory reported to the MRO that the specimen was negative-dilute, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation.
    d. The reason for the observed collection must be explained to the employee.

5. An employer must direct a collection under direct observation if the drug test is a return-to-duty test or a follow-up test. The reason for the observed collection must be explained to the employee.

6. The collector must immediately conduct a collection under direct observation if:
    a. Directed by the DER to do so;
    b. The collector observed materials brought to the collection site or the employee's conduct indicates an attempt to tamper with the specimen; or
    c. The temperature on the original specimen was out of range, or the specimen appeared to have been tampered with.

7. Precautions will be taken to ensure that a urine specimen will not be tampered with and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected.

8. Transportation of the sample to the laboratory shall follow chain of custody procedures.

9. If the MRO verifies a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, the MRO must inform the employee of their right to a split sample. The MRO must notify the employee of his or her right to request the split specimen test, and of the procedures for requesting that test. The employee has 72 hours, from the time of notification by the MRO, to request a test of the split specimen. The MRO must provide the employee with telephone numbers or other information that will allow the employee to make the request. The MRO must always have the ability to receive the employee's calls during the following 72-hour period. This includes by use of an answering machine with a "time stamp" feature when there is no one in the MRO's office to answer the phone.

10. The State will pay the cost of the split specimen test but will seek reimbursement for the cost of the test if the test result is positive. The MRO must tell the employee that additional tests of the specimen (e.g., DNA tests) are not authorized.

11. An employee who is unable to provide the required minimum amount of specimen will be urged to drink up to 40 ounces of fluid during a three-hour period or until the employee provides a sufficient specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. The collector must document and inform the employee of the time at which the three-hour drinking period begins and ends. If after three hours the employee is still unable to provide the required specimen, the testing effort will be discontinued. The collector must document these facts and notify the MRO and DER within 24 hours or the next business day.

    After consulting with the MRO, the DER must direct the employee to obtain an evaluation from a licensed physician that is acceptable to the MRO. The physician must have expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. The MRO may perform the evaluation if they have the appropriate expertise. If the physician determines that a medical condition has, or with a high probability could have, precluded the employee from providing a sufficient amount of urine and the MRO accepts this recommendation, this will be determined as a cancelled test. If there is not an adequate basis for determining that a medical condition has or could have precluded the employee from providing a sufficient amount of urine and the MRO accepts this recommendation, this will be determined as a refusal to test. A medical condition includes an ascertainable physiological condition but does not include unsupported assertions of "situational anxiety" or dehydration. If the employer received a report from the MRO that a medical condition has precluded the employee from providing a sufficient amount of urine, the employer will take no further action with respect to the employee, and the employee will remain in the random testing pool.

Alcohol Testing

1. Screening test technicians and breath alcohol technicians are the only people authorized to conduct alcohol tests.

2. An alcohol test must take place at an alcohol testing site that meets the requirements of federal regulations and provides the employee being tested with privacy. Only alcohol screening devices (ASDs) or evidential breath testing devices (EBTs) that are listed on the federal Office of Drug & Alcohol Policy & Compliance (ODAPC) Web page can be used for alcohol screening tests. Only EBTs that are listed on the ODAPC Web page will be used to conduct alcohol confirmation tests.

3. The federal DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test.

4. If an employee is unable to provide a sufficient amount of saliva to complete an alcohol test on a saliva screening device, the DER must arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

5. If an employee has not provided a sufficient amount of breath, the employer must direct the employee to obtain, within five days, an evaluation from a licensed physician who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen and who is acceptable to the employer. The employer must provide the physician the following information and instructions:
    a. That the employee was required to take a DOT breath alcohol test but was unable to provide a sufficient amount of breath to complete the test.
    b. The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test.
    c. That the physician must provide the employer with a signed statement of his or her conclusions.
    d. That the physician, in their reasonable medical judgment, must base those conclusions on one of the following determinations:
        i. A medical condition that has, or with a high degree of probability, could have precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.
        ii. There is not an adequate basis for determining that a medical condition has, or with a high degree of probability, could have precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.
        iii. A medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a medically documented pre-existing psychological disorder but does not include unsupported assertions of "situational anxiety" or hyperventilation.

6. The physician shall provide written documentation of the physician's conclusions and the basis for them to the DER directly.

Test Results

1. An employer who receives a verified positive drug test result must immediately remove the employee involved from performing safety-sensitive functions. This action must be taken upon receiving the initial report of the verified positive test result. The employer should not wait to receive the written report or the result of a split specimen test before removing the employee from safety-sensitive functions.

2. An employer who receives a verified adulterated or substituted drug test result must consider this a refusal to test and immediately remove the employee involved from performing safety-sensitive functions. This action must be taken on receiving the initial report of the verified adulterated or substituted test result. The employer should not wait to receive the written report or the result of a split specimen test.

3. An employer who receives an alcohol test result of 0.04 or higher must immediately remove the employee involved from performing safety-sensitive functions. An employer who receives an alcohol test result of 0.02-0.039 must temporarily remove the employee involved from performing safety-sensitive functions, as provided in applicable DOT agency regulations. Do not wait to receive the written report of the result of the test.

4. An employee with a verified positive, adulterated, or substituted test result, or who has otherwise violated a federal DOT agency drug and alcohol regulation, must not return to the performance of safety-sensitive functions until or unless the employee successfully completes the return-to-duty process required by federal regulations.

5. An employer who receives a drug test result indicating that the employee's specimen was dilute must take the following actions:
    a. If a positive drug test was dilute, the employer should treat the test as a verified positive test. Do not direct the employee to take another test because the specimen was dilute.
    b. If a negative drug test was dilute, the employer must immediately comply with MRO directions to conduct a recollection under direct observation. If the MRO does not issue such a direction, the employer may direct the employee to take another test immediately. Recollections taken without direction from the MRO must not be collected under direct observation unless there is a basis for doing so. The employer must treat all employees the same for this purpose.
        i. The result of the recollection is the test result of record and is the test result that the employer will rely on. If the test result is also negative and dilute, the employer shall not make the employee take an additional test unless directed to do so by the MRO.
        ii. If the employee declines to take the recollection, the employee has refused the test.

6. An employer who receives a drug test result indicating that the employee's urine specimen test was cancelled because it was invalid and that a new test must take place under direct observation must take the following actions:
    a. Immediately direct the employee to provide a new specimen under direct observation.
    b. Do not attach consequences to the finding that the test was invalid other than collecting a new specimen under direct observation.
    c. Do not give any advance notice of the test requirement to the employee.
    d. Instruct the collector to note the same reason on the collection form (e.g., random test, post-accident test) and DOT agency as for the original collection.
    e. Ensure that the collector conducts the collection under direct observation

7. An employer who receives a cancelled test result when a negative test result is required (e.g., pre-employment, return-to-duty, or follow-up test) must direct the employee to provide another specimen immediately

8. An employer must not alter a drug or alcohol test result transmitted by an MRO, BTA, or C/TPA.

IX. Testing Procedures

To ensure a drug-free workforce, an employer is required to conduct pre-employment/pre-placement-controlled substances tests, and random, post-accident, reasonable suspicion, return-to-duty, and follow-up alcohol and controlled substances tests on all covered employees. The controlled substances tests will test for marijuana, cocaine, opioids, phencyclidine (PCP), and amphetamines.

Pre-Employment/Pre-Placement Testing

1. Prior to the first time a driver performs a safety-sensitive function for an employer, the driver shall undergo testing for controlled substances as a condition prior to performing safety-sensitive functions. The employer shall not allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver.

2. Drivers will be removed from the employer's random testing pool if there is no reasonable expectation of their return to employment with the employer. If a driver has been removed from the employer's random testing pool for more than 30 days, the employing agency must give the driver a pre-employment test, and a negative test result must be received, before the driver may operate a commercial motor vehicle for the employer. If less than 30 days has passed since the driver was under the employer's random testing program, the employer is not required to conduct a pre-employment test on the driver. This situation only applies to employment with the same employer.

3. Before performing the controlled substances pre-employment/pre-placement test, the employer shall notify the driver that the test is required by federal regulation. The individual must be informed that the test will be looking for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

4. The employer will notify all individuals in writing that passing the pre-employment/pre-placement-controlled substances test is a condition for employment. The employer will hire or place a candidate in a covered position only after receipt of the written confirmation of negative test results from the MRO.

5. If the candidate does not pass the test, the second most desirable candidate will be tested. The employer will provide a candidate who does not pass the test a listing of SAPs, including names, addresses, and telephone numbers.

6. An employer may conduct pre-employment/pre-placement testing for alcohol.

7. Prior to performing any safety sensitive duties, the applicant will be required to complete and sign a consent form for information from all previous DOT-regulated employers from the previous three years. An applicant who refuses to provide this written consent must not be permitted to perform safety-sensitive functions. Information requested must date back three years, and the information to be requested includes:
    a. Alcohol tests with a result of 0.04 alcohol concentration or greater;
    b. Verified positive controlled substance test results;
    c. Refusals to be tested (including verified adulterated or substituted drug test results);
    d. Other violations of federal DOT agency drug and alcohol testing regulations; and
    e. With respect to any employee who violated federal DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process, you must seek to obtain this information from the employee. If the employer obtains information that the employee has violated a DOT agency drug and alcohol regulation, the employer must not use the employee to perform safety-sensitive functions unless it also obtains information that the employee has subsequently complied with the return-to-duty requirements.

8. Records of information obtained from previous DOT-regulated employers, or of the good faith efforts made to obtain the information, will be retained for three years from the date of the employee's first performance of safety-sensitive duties. An employer shall also retain records as described in Section X, below.

Random Testing

1. A covered employee shall be subject to drug and alcohol testing on an unannounced and random basis

2. Covered employees are randomly selected from a single pool composed of all State agency employees covered by this plan. Each employee in the pool shall have an equal chance of selection and shall remain in the pool, even if they have been selected previously.

3. Random testing for controlled substances must be administered to no less than 25 percent (or no less than the percent set by the FMCSA annually) of the drivers in covered positions on an annual basis. Random alcohol testing shall be administered to no less than 10 percent (or no less than the percent set by the FMCSA annually) of the drivers in covered positions annually.

4. A covered employee shall be selected for drug and alcohol testing on a random basis by using a scientifically valid random generation number in a computer program.

5. The vendor will provide a computer program for making the random selections throughout the year to ensure against predictable selection dates.

6. The DER shall submit the names and driver's license numbers of all covered employees, updated on a quarterly basis.
    a. The vendor will notify the DER of the employees selected.
    b. The DER will then:
        i. Notify the employee that they have been selected for random testing; and
        ii. Immediately dispatch the employee to the collection site for testing.

7. Test Results
    a. Refer to Test Results under Section VIII. above for additional information regarding test results.
    b. If the test results are negative, no further action is necessary.
    c. If the test results are positive:
        i. The MRO will notify the agency DER of a positive test result after having contacted the employee, or after having followed Standard Operating Procedures for attempting to contact the employee.
        ii. For drug testing, the MRO will inform the employee that they have the right, within 72 hours, to submit a request to have the split sample be sent to an alternate DHHS/SAMHSA approved lab. If the result of the split sample is positive, the employee is financially responsible for the test and will be billed by the State of Minnesota.
        iii. The employee must be immediately removed from performing safety-sensitive job functions. Under the State's independent authority, the employee will be immediately removed from work and placed on leave. On the first positive, the employee will be on leave without pay until evaluated by a SAP. Prior to being placed in no-pay status, the employee will be offered a meeting with their supervisor to learn the reasons for being placed in no-pay status and to tell their side of the story. The employee may have union representation at the meeting. On the second positive, the employee will be placed on paid investigatory leave.
        iv. When results are positive, the employee will be referred to a SAP. The SAP will provide a comprehensive face-to-face assessment and evaluation and recommend a course of education/treatment. The employee cannot perform any safety-sensitive duties until and unless they complete the SAP evaluation, referral, and education/treatment process.
        v. Under the State's independent authority, on a first positive result, the employee shall not be discharged if the employee completes an evaluation, referral, and education/treatment

recommended by a SAP. An employee who fails to meet with the SAP, refuses to participate in the evaluation, referral, or education/treatment (as determined by and reported by the SAP), or who tests positive on any second confirmed test, shall have no such protection against discharge.

8. The employer shall retain records as described in Section X, below, and the following:
    a. The names and driver's license numbers of all covered employees sent to the vendor.
    b. A copy of the written notification of all names and driver's license numbers selected for random testing by the vendor.
    c. A copy of the letter from an employee requesting a test of the split sample, to be retained for the same length of time as the corresponding test result is kept.

Post-Accident Testing

1. An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements.

2. As soon as it is practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each surviving driver shall be tested for alcohol:
    a. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
    b. Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
        i. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
        ii. 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.

3. As soon as it is practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each surviving driver shall be tested for controlled substances:
    a. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
    b. Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
        i. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
        ii. 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.

    Consult the following chart for additional guidance on whether a certain post-accident circumstance requires testing:

Type of Accident	Citation Issued to Driver	Test Must Be Performed by Employer
Human Fatality	Yes	Yes
Human Fatality	No	Yes
Bodily injury with immediate medical treatment away from the scene	Yes	Yes
Bodily injury with immediate medical treatment away from the scene	No	No
Disabling damage to any motor vehicle requiring tow away	Yes	Yes
Disabling damage to any motor vehicle requiring tow away	No	No

4. If a required alcohol test is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reason a test was not promptly given.

5. If a required alcohol test is not administered within 8 hours following the accident, the employer must cease attempts to administer the test and prepare and maintain the record described above. The written documentation will be forwarded to the agency DER.

6. If the employee has not been administered a required drug test within 32 hours following the accident, attempts to administer the test shall cease. The employer shall prepare and maintain a record stating the reasons why the test was not promptly administered. The written documentation will be forwarded to the agency DER.

7. A driver who is subject to post-accident testing shall remain readily available for such testing. Failure to remain readily available may be deemed by the employer as a refusal to submit to testing. The driver may take any necessary steps to obtain medical attention for injured persons (including the driver) and may leave the scene of the accident for the period necessary to obtain assistance in responding to the accident or to obtain emergency medical care.

8. If the employee is tested by a party other than the vendor's agent, the employee is responsible for providing the employer with the name of the testing agent and a release for the employer to obtain the test results.

9. Test Results
    a. Refer to Test Results under Section VIII. above for additional information regarding test results.
    b. If the test results are negative, the MRO may release the employee to return to work. Under the State's independent authority, the employee may be subject to discipline up to and including

discharge as a result of the employee's behavior related to the accident, regardless of the negative test results.

c. If the test results are positive:
    i. The MRO will notify the DER of the positive test result after having contacted the employee, or after having followed Standard Operating Procedures for attempting to contact the employee.
    ii. For drug testing, the MRO must inform the employee that they have the right, within 72 hours, to submit a request to have the split sample sent to an alternate DHHS/SAMHSA approved lab. If the result of the split sample test is positive, the employee is financially responsible for the test and will be billed by the State of Minnesota.
    iii. The employee must immediately be removed from performing safety-sensitive job functions. Under the State's independent authority, the employee will be immediately removed from work and placed on leave. On the first positive, the employee will be on leave without pay until evaluated by a SAP. Prior to being placed in no-pay status, the employee will be offered a meeting with their supervisor to learn the reasons for being placed in no-pay status and to tell their side of the story. The employee may have union representation at the meeting. On the second positive, the employee will be placed on paid investigatory leave and will be subject to discipline up to and including discharge.
    iv. When results are positive, the employee will be referred to a SAP. The SAP will provide a comprehensive face-to-face assessment and evaluation and recommend a course of education/treatment. The employee cannot perform any safety-sensitive duties until and unless they complete the SAP evaluation, referral, and education/treatment process.
    v. Under the State's independent authority, on a first positive result, the employee shall not be discharged if the employee completes an evaluation, referral, and education/treatment recommended by a SAP. An employee who fails to meet with the SAP, refuses to participate in the evaluation, referral, or education/treatment (as determined by and reported by the SAP), or who tests positive on any second confirmed test, shall have no such protection against discharge.

10. The employer shall retain records as described in Section X, below, and obtain and retain a copy of:
    a. The completed Accident Report Form, including a notation of the citation, for any accident and state whether testing is/is not required; and
    b. A copy of the letter from an employee requesting a test of the split sample, which will be retained for the same length of time as the corresponding test result is kept.

11. The DER will maintain a file of all written documentation regarding the reasons why drug and/or alcohol tests were not administered within the timeframes required in this section.

Reasonable Suspicion Testing

1. 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 related to alcohol.

2. 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.

3. 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 related to controlled substances.

4. 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.

5. The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or agency official who is trained to determine whether reasonable suspicion exists to require a driver to undergo testing, including the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances, in accordance with federal regulations. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

6. Alcohol testing is authorized only if the observations are made during, just preceding, or just after the period of the workday that the driver is required to be in compliance.

7. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

8. If a required alcohol test is not administered within 2 hours following the reasonable suspicion determination, the employer shall prepare and maintain on file, a record stating the reasons the alcohol test was not properly administered.

9. If an alcohol test is not administered within 8 hours following the determination, the employer shall cease attempts to administer the test and shall state in the record the reasons for not doing so.

10. A driver shall not report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:
    a. An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or
    b. Twenty-four hours have elapsed following the determination that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

11. A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

12. An employee in a collective bargaining unit is entitled to union representation prior to any reasonable suspicion test.
    a. When the physical presence of a union representative is not practical, the employee shall be allowed to confer with a union representative by telephone.
    b. Local unions shall be responsible for providing these names and phone numbers.
    c. Under no circumstances should accessing union representation delay administration of the test.

13. A supervisor must escort the employee to the collection site.

14. Test Results
    a. Refer to Test Results under Section VIII. above for additional information regarding test results.

b. If the test results are negative, the MRO may release the employee to return to work. Under the State's independent authority, the employee may be subject to discipline up to and including discharge as a result of his/her behavior preceding the reasonable suspicion test regardless of the test results.
c. If the test results are positive:
    i. The MRO will notify the agency DER of the positive test result after having contacted the employee, or after having followed Standard Operating Procedures for attempting to contact the employee.
    ii. For drug testing, the MRO must inform the employee that they have the right within 72 hours to request that the split sample be tested at an alternate DHHS/SAMHSA approved lab. If the result of the split sample test is positive, the employee is financially responsible for the test and will be billed by the State of Minnesota.
    iii. The employee must be immediately removed from performing safety-sensitive job functions. Under the State's independent authority, the employee will be immediately removed from work and placed on leave. On the first positive, the employee will be on leave without pay until evaluated by a SAP. Prior to being placed in no-pay status, the employee will be offered a meeting with their supervisor to learn the reasons for being placed in no-pay status and to tell their side of the story. On the second positive, the employee will be placed on investigatory leave and will be subject to discipline up to and including discharge.
    iv. When results of are positive, the employee will be referred to a SAP. The SAP will provide a comprehensive face-to-face assessment and evaluation and recommend a course of education/treatment. The employee cannot perform any safety-sensitive duties until and unless they complete the SAP evaluation, referral, and education/treatment process.
    v. Under the State's independent authority, on a first positive result, the employee shall not be discharged if the employee completes an evaluation, referral, and education/treatment recommended by a SAP. An employee who fails to meet with the SAP, refuses to participate in the evaluation, referral, or education/treatment (as determined by and reported by the SAP), or who tests positive on any second confirmed test, shall have no such protection against discharge.

15. The employer shall retain records as described in Section X, below, and the following:
    a. A written record of the observations leading to a reasonable suspicion test, signed by the supervisor(s) who made the observations, within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier.
    b. A copy of the letter from an employee requesting a test of the split sample, to be retained for the same period of time as the corresponding test result.

Return-to-Duty Testing

1. An employee who violates federal DOT drug and alcohol regulations cannot again perform any safety sensitive duties until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment and the employee takes a return-to-duty test. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

2. An employer is not required to return an employee to safety-sensitive duties even if the employee has met the above conditions. An employer has the discretion to make this decision, subject to collective bargaining agreements and other legal requirements.

3. An employee who refuses to take, or does not pass, a return-to-duty drug and/or alcohol test may not return to a covered position until the employee passes a drug and/or alcohol test and the employer has determined that the employee may return to duty.

4. If an employer received a recommendation from a SAP that the employee receive ongoing services, the employer may, as part of a return-to-duty agreement with the employee, require the employee to participate in the recommended services.

5. The employee is responsible for reporting to a collection site when required by the employer.

6. Test Results
    a. Refer to Test Results under Section VIII. above for additional information regarding test results.
    b. If the test results are negative, the agency DER informs the employee and the employee's supervisor.
    c. If the test results are positive:
        i. The employee cannot return to his/her safety-sensitive position.
        ii. The MRO will notify the agency DER of a positive test result after having contacted the employee, or after having followed Standard Operating Procedures for attempting to contact the employee.
        iii. For drug testing, the MRO will inform the employee that the employee has the right within 72 hours to submit a request for the split sample to be tested at an alternate DHHS/SAMHSA approved lab. If the result of the split sample test is positive, the employee is financially responsible for the test and will be billed by the State of Minnesota.
        iv. Under the State's independent authority, the employee will be placed on paid investigatory leave and will be subject to discipline up to and including discharge.

7. The employer shall retain records as described in Section X, below, and the following:
    a. A statement from the SAP stating the employee's compliance or non-compliance with the recommended treatment, education and/or counseling for five years.
    b. A copy of the letter from an employee requesting a retest of the split sample, to be retained for the same period of time as the corresponding test result.

Follow-Up Testing

1. For each employee who has committed a federal DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, the SAP must establish a written follow-up testing plan. This plan will be established after the SAP determines that the employee has successfully complied with recommendations for education and/or treatment. A copy of this plan will be given to the DER.

2. The SAP is the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by federal regulations. The SAP must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions. These testing requirements "follow the employee" to subsequent employers or through breaks in service.

3. The employer must carry out the SAP's follow-up testing requirements. The employee may not continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP. The employer may schedule follow-up tests on dates of the employer's choosing, but the tests must be unannounced to the employee and there must not be a discernable pattern.

4. The employer cannot substitute other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement. The employer cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

5. The employee is required to report to a collection site when required by the employer.

6. Follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, just after the driver has ceased performing safety-sensitive functions, or at any time the employee is in readiness to perform safety-sensitive functions.

7. Test Results
    a. Refer to Test Results under Section VIII. above for additional information regarding test results.
    b. If the test results are negative, the agency DER may release the employee to return to work.
    c. If the test results are positive:
        i. The MRO will notify the agency DER of a positive test result after having contacted the employee, or after having followed Standard Operating Procedures for attempting to contact the employee.
        ii. For drug testing, the MRO will inform the employee that they have the right, within 72 hours, to submit a request to have the split sample be sent to an alternate DHHS/SAMHSA approved lab. If the result of the split sample is positive, the employee is financially responsible for the test and will be billed by the State of Minnesota.
        iii. The employee must be immediately removed from performing safety-sensitive job functions. Under the State's independent authority, the employee will be placed on paid investigatory leave and will be subject to discipline up to and including discharge.

8. An employer shall maintain reports from SAPs for five years from the date received. An employer shall also retain records as described in Section X, below.

X. Records Retention

An employer shall maintain records of its anti-drug and alcohol misuse program as described below, in a secure location with controlled access.

Five Years

1. The employer shall retain a copy of the following for five years:
    a. Records of alcohol test results indicating an alcohol concentration of 0.02 or greater.
    b. Records of verified positive drug test results.
    c. Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results).
    d. Driver evaluation and referrals.
    e. Calibration documentation.
    f. Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations.
    g. A copy of each annual calendar year summary.
    h. SAP reports, and all follow-up tests and schedules for follow-up tests.

Three Years

1. The employer must retain the driver's written or electronic consent to query the Clearinghouse for three years.
2. The employer must retain for three years a record of each Clearinghouse query and all information received in response to each query.

Two Years

1. The employer must keep records related to the alcohol and controlled substances collection process (except calibration of EBT devices) for two years.

One Year

1. The employer must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.

XI. FMCSA Drug and Alcohol Clearinghouse

Reporting

1. The following information collected shall be reported to the Clearinghouse.
    a. A verified positive, adulterated, or substituted drug test result.
    b. An alcohol confirmation test with a concentration of 0.04 or higher.
    c. A refusal to submit to any required test.
    d. An employer's report of actual knowledge of:
        i. On duty alcohol use.
        ii. Pre-duty alcohol use within four hours of performing safety-sensitive functions.
        iii. Alcohol use following an accident.
        iv. Controlled substance use.
    e. An SAP report of the successful completion of the return to duty process.
    f. A negative return to duty test.
    g. An employer's report of completion of follow up testing.

Queries

The Employer is required to conduct Clearinghouse checks on CDL drivers in the following circumstances:

1. New Drivers
    a. Employers of CDL drivers, subject to the DOT drug and alcohol testing rules, will be required to query the CDL Clearinghouse before hiring new drivers. The query will be to obtain information about whether:
        i. The driver has a verified positive, adulterated, or substituted controlled substances test result;
        ii. Has an alcohol confirmation test with a concentration of 0.04 or higher;
        iii. Has refused to submit to a test in violation of federal regulation; or
        iv. An employer has reported actual knowledge that the driver used alcohol on duty, before duty, following an accident, or used a controlled substance, in violation of federal regulation.

2. Existing Drivers
    a. At least once annually, employers of CDL drivers subject to the DOT drug and alcohol testing rules must query the Clearinghouse to determine whether information exists in the Clearinghouse about those employees.
    b. An employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year.
    c. If the limited query shows that information exists in the Clearinghouse about an individual driver, the employer must conduct a full query within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions.
    d. No employer may allow a driver the employer employs or intends to hire or use to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test; or that an employer has reported actual knowledge that the driver used alcohol on duty, used alcohol before duty, used alcohol following an accident, or used a controlled substance in violation of federal regulation, except where a query of the Clearinghouse demonstrates the following:
        i. That the driver has successfully completed the SAP evaluation, referral, and education/treatment process; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.
        ii. That, if the driver has not completed all follow-up tests as prescribed by the SAP and specified in the SAP report, the driver has completed the SAP evaluation, referral, and education/treatment process and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

3. Employers must retain for 3 years a record of each query and all information received in response to each query made under this section.

XII. Training/Education Program

All employees in positions covered by this plan shall receive information from their agency that will address the effects and consequences of controlled substance use and alcohol abuse on personal health, safety and the work environment.

Information for CDL drivers can be found on the FMCSA website: FMCSA Drug and Alcohol Testing- Driver Resources.

All covered employees shall receive a copy of the Drug and Alcohol Testing Plan. A signed certification of the covered employee's receipt of the Drug and Alcohol Testing Plan and educational materials will be maintained by the agency's designated employer representative.

Supervisors responsible for observation and documentation leading to reasonable suspicion testing will receive training in specific contemporaneous physical and behavioral clues that may indicate prohibited drug or alcohol use. Said training is the responsibility of the employer.

ATTACHMENTS

Attachment A

HR/LR Policy #1418 Prohibition of Drug and Alcohol Use by State Employees

Attachment B

State of Minnesota Drug and Alcohol Testing Plan Designated Employer Representatives (DER)

Attachment C

MMCAP Resource Document

RESPONSIBILITIES

Agencies are responsible for:

- Developing agency Drug and Alcohol Testing Plans in accordance with this policy and procedures.
- Each agency must designate a Designated Employer Representative (DER) who is responsible for the administration of this program for their agency.

MMB is responsible for:

- Updating this Testing Plan and HR/LR Policy #1418 Prohibition of Drug and Alcohol Use by State Employees.

Employees with CDL licenses are responsible for:

- Registering with the FMCSA Drug and Alcohol Clearinghouse.

REFERENCES

FMCSA Drug and Alcohol Testing- Driver Resources

MMCAP (Minnesota Multistate Contracting Alliance for Pharmacy) Vendor Resource Document

CONTACTS

MMB Enterprise Employee Resources