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- I. It is the policy of Abhe & Svoboda, Inc. to provide a healthy and safe working environment for its employees by assuring that all employees are fit for duty while on the job. Employee involvement with alcohol or drugs can adversely affect the work environment, job performance and safety. Therefore, the following are strictly prohibited:
- A. The use, possession, distribution, manufacture or dispensing of unlawful drugs while on duty or during working hours.
 - B. Reporting for work after using a prohibited substance or working while under the influence of or impaired by alcohol, controlled substances or any other drug;
 - C. The possession or drug paraphernalia.

This policy applies to all not regulated employees in Minnesota. Regulated employees or employees in other states will be provided an addendum detailing any rules that differ from the policy. Regulated or other states rules will take priority where they differ from this policy.

- II. Alcohol - Employees found drinking or possessing alcohol on the job or reporting to work under the influence of alcohol (including, but not limited to any measurable alcohol concentration or any detected presence of alcohol as defined below), or impaired by intoxicants will be subject to immediate discharge. Any employee who operates machinery or vehicles while performing their job duties shall not have consumed any alcoholic or intoxicating beverage within (4) hours of reporting for duty. Empty alcoholic containers are not to be brought onto the job site or stored in vehicles.
- III. Any alcohol test result in excess of .02 will be considered positive.
- IV. Drugs - Employees who manufacture, use, distribute, dispense or possess unlawful drugs, controlled substances or drug paraphernalia while on duty or during working hours (on or off premises) will be subject to immediate discharge. A prescription drug will be excepted provided the employee has complied with the medication reporting requirement of this policy (paragraph V) and is using the drug in compliance with a physician's direction and prescription.
- V. Prescribed Medications - Employees who report to work while being treated for a medically verifiable condition requiring the use of prescription or over-the-counter drugs or medications or controlled substances, which they have been advised by their treating medical provider or prescription package may alter the employee's physical or mental abilities, must immediately report the use of such drug, substance or medication to the project superintendent, Company officer or supervisor. *Example: Prior to the start of a shift an employee must report that he/she has used or is using such medications.*

All information reported to the project superintendent, Company officer, or supervisor will be kept confidential. Employees have a responsibility to ASI and to those with whom they work to read any and all informational labels on medication and to ask their physician what effect the drug, substance or medication may have on them physically or mentally. Any employee who fails to comply with the above may be subject to immediate discharge or discipline.

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- VI. Reporting of policy violations and criminal convictions - Employees shall abide by the terms of this drug and alcohol policy and shall immediately report any unsafe working condition or hazardous activity that may jeopardize the employee's safety or the safety of fellow employees. This responsibility includes immediately reporting violations of this drug and alcohol policy. It is also the employee's responsibility to report any criminal conviction under a federal, state or local law arising out of the use, possession, manufacture, distribution, or dispensing of drugs, controlled substances, or alcohol while on ASI premises or in the conduct of ASI business within five (5) days of such conviction. Failure to comply with this requirement will subject the employee to immediate discharge.
- VII. Searches - Abhe & Svoboda, Inc. reserves the right to carry out reasonable searches of employees and their property (including, but not limited to, storage areas, lunch boxes and private vehicles) when there is reasonable cause to suspect that illegal drugs or alcohol may be present. Any employee who refuses to submit immediately to such a search shall constitute insubordination and may be grounds for immediate discharge.
- VIII. Employee Testing - Employees and applicants are subject to testing for the presence of alcohol, drugs or controlled substances. Testing will be at the discretion of ASI or otherwise in compliance with applicable laws concerning drug and alcohol testing. Testing procedures are intended to protect individual privacy, ensure accountability and integrity of the specimens and to provide confidentiality of test results. All tests will be performed by a SAMHSA (Substance Abuse and Mental Health Services Administration) certified laboratory. Employees who test positive will be notified of the result and offered an opportunity to discuss the result and any circumstances that may reasonably explain it. Job applicants shall be notified of such test results if a request is made within sixty (60) days of the date the applicant is informed he or she will not be hired.
- A. Drug Type - Employees will be tested for the following drugs:
- | | | |
|--------------------------|--------------|-----------------|
| Amphetamines | Barbiturates | Benzodiazepines |
| Cannabinoids (Marijuana) | Cocaine | Opiates |
| Phencyclidine (PCP) | | |
- B. Applicant Screening - Applicants being considered for employment will be subject to pre-employment screening for drugs as set forth above. A positive result from such screening tests will be grounds for denying or revoking employment to the applicant.
- C. Reasonable Suspicion - Employees will be tested if there is a "reasonable suspicion" that the employee may have used or is under the influence of or impaired by alcohol, a controlled substance or other drug. If possible, the determination of "reasonable suspicion" will be made by two supervisors or other management employees. However, when a second person is not available, one supervisor or one management employee will be allowed to require testing. Tests will be performed in accordance with this policy and using state permitted specimens (ex: blood and/or urine) collected from the employee. A positive test result will be grounds for immediate discharge. Refusal to

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submit to a request for testing for the presence of alcohol or drugs will give rise to a presumption of intoxication or usage and such refusal shall also constitute insubordination and be grounds for immediate discharge.

1. Anyone selected for testing based on "Reasonable Suspicion" should be escorted by supervision to the site with the option to stand in the same area when the specimen is delivered.
2. Observations leading to a determination of reasonable suspicion include, but are not limited to, the following:
 - a. Drinking of alcohol or use of unlawful drugs or other controlled substances while on duty;
 - b. Slurred speech;
 - c. Unsteady gait or posture;
 - d. Erratic behavior;
 - e. Disorientation and confusion;
 - f. Inability to perform routine tasks;
 - g. Disorderly appearance in dress or grooming;
 - h. Odor of alcohol or other ingested substance;
 - i. Proximity to discovered substances or containers reasonably believed to be or hold alcohol or drugs;
 - j. Glassy or red eyes or other eye characteristics associated with the use of alcohol or other drugs;
 - k. Erratic attendance and/or increasing frequency of tardiness; and,
 - l. Any accident or incident on or off ASI premises while conducting ASI business or while on duty which results in personal injury or property damage where it is reasonable to suspect that human error could be at least in part an issue. Reportable accidents include those which involve the following:
 - i. A fatality;
 - ii. Bodily injury to a person who, because of the injury, immediately receives medical treatment away from the scene of the accident.
 - iii. Property damage which requires one or more vehicles to be towed;

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- iv. Any other actions, behavior or observations that the supervisory personnel believe create a reasonable suspicion of drug or alcohol use, or;
 - v. Any employee whose actions or lack of action may have contributed to an accident or injury will also be tested.
 - 3. Project superintendents or other supervisory personnel have the authority and the responsibility to make determinations as to whether or not there is “reasonable suspicion” that an employee may have used alcohol, controlled substances or other
 - 4. drugs. Supervisory personnel should note any observations concerning the appearance, behavior, speech or body odors of the employee. They may also include information gathered from other persons or sources in their determination.
 - 5. If an employee has used alcohol, controlled substances or other drugs it does not matter whether the use of alcohol or drugs was just before, during or just after work. Such use may be grounds for discharge.
 - D. Random Testing - All employees may be subject to systematic random drug and alcohol testing. Failure of an employee to submit to random testing shall constitute insubordination and subject the employee to discipline up to and including discharge.
- IX.** Leaving the Work Site - During an investigation involving the use or possession of drugs or alcohol, or once a determination of reasonable suspicion has been made, an employee shall not leave the work site without approval. Failure to remain on site or assisting another employee in leaving the site under these circumstances, shall be considered insubordination, improper conduct and shall subject the involved employee(s) to discipline up to and including discharge.
- X.** Treatment – ASI recognizes that drug and alcohol dependency is a treatable health problem. Employees needing assistance in dealing with such a problem or dependency are encouraged to consult with management to obtain information on the availability of treatment clinics and programs. Costs of treatment will be the responsibility of the employee.
- A. ASI encourages treatment for any drug or alcohol dependency and this policy is implemented to encourage employees with health problems to seek treatment before their jobs are in jeopardy or the safety, health and security of fellow employees or the work environment is put at risk. However, once an employee is in a job jeopardy status, subsequent treatment may not be considered as a mitigating factor.
 - B. Employees who successfully complete a drug and/or alcohol rehabilitation program can return to their former positions provided they sign an agreement regarding the conditions required by ASI (and that the position or its equivalent is still available). Further violation of said agreement or company policy is grounds for dismissal.

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- XI.** Re-employment / Re-entry into the Work Place - Any safety-sensitive employee who leaves ASI either through layoff, resignation, termination or disability for a period exceeding sixty (60) days will be subject to the same testing as a new applicant prior to re-entry into the workforce. Abhe & Svoboda, Inc. will not re-hire any individual who fails to pass the alcohol and drug test.
- XII.** Discipline - The discipline to be imposed for violations of the Drug and Alcohol Policy will be governed solely by the provisions set forth herein. Employees are warned and advised that those who violate the Drug and Alcohol Policy may be subject to immediate termination.
- XIII.** Condition of Employment - Compliance with Abhe & Svoboda, Inc.'s Drug and Alcohol Policy is a condition of employment. Failure or refusal of an employee to cooperate fully, submit to any search or test, or follow any prescribed course of substance abuse treatment will be grounds for termination.
- XIV.** Implementation - The implementation of this policy does not alter the employment-at-will status of its employees nor does it create an expressed or implied contract in the employment relationship. Your employment may be terminated by you or ASI at any time with or without cause or reason.

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RETURN TO WORK AGREEMENT

Abhe & Svoboda, Inc. fully supports your determination to seek treatment and successfully complete a rehabilitation program.

Under the following conditions, you will retain your job upon completion of the program:

1. You will enroll in and agree to complete a rehabilitation program approved by the Company;
2. You will comply with and complete all of the program requirements;
3. You will begin work promptly upon completion of the rehabilitation program. (You may return to work at a point where you and your drug rehabilitation counselor agree you are ready to return to work. Be aware that a positive drug test will result in your termination.); and,
4. You will submit to weekly drug tests, at your expense, for a period determined to be appropriate by your drug rehabilitation counselor, but not less than six months and no longer than a period of two years after the completion of treatment and reinstatement to our job. A positive drug test result will be cause for discharge.

Failure to satisfy any of the above specified conditions or to sign below will result in your discharge from this Company.

I have read and I understand the above agreement. My signature below signifies my acceptance of this agreement.

Employee's Signature

Date

Authorized Representative

Date

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Policy Review

Attachment "A"

Post-Accident Testing

- A.** As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers:
1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or,
 2. 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.

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES NO	YES NO
ii. Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
iii. Disabling damage to any motor vehicle requiring tow away	YES NO	YES NO

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Policy Review

Attachment "B"

ASI's Medical Review Officer (MRO) will contact any employee testing positive for the presence of a prohibited controlled substance (not alcohol) The employee will be allowed to present medical documentation to explain any permissible use of a drug. All such discussions between the employee and the MRO will be confidential. ASI will not be a party to or have access to matters discussed between the employee and the MRO. Until the employee contacts the MRO or a reasonable time has lapsed after the employee was asked to contact the MRO, ASI will not be advised of the test result.

If legitimate, medically supportable reasons exist to explain the positive result, the MRO will report the test result to ASI as a negative. If there is no legitimate medically supportable reason for the positive test result, the MRO will report the test result as positive. ASI will then notify the employee of the positive result and the substance(s) detected.

If, during the course of an interview with an employee who has tested positive, the MRO learns of a medical condition or use of a legitimately prescribed medication which, in the MRO's reasonable medical judgment, could render the employee unfit to perform any safety-sensitive functions, or which could pose a significant safety risk, the MRO must report that information to ASI.

Before reporting any safety concerns and/or medical information to ASI under these circumstances, the MRO will advise the employee that he/she has **up to five business days** to have their prescribing physician contact the MRO to determine if any alternative medication(s) could be recommended that would not render the employee unfit for duty or pose a risk to safety.

If the result is reported to ASI as positive by the MRO, ASI will notify the employee in writing of the following:

1. The result of the test;
2. The employee's right to have the split sample analyzed;
3. The employee's right to choose the laboratory to analyze the split sample;
4. The employee's right to take up to 3 days after the date of written notice to decide whether to have the split analyzed; and,
5. The employee's responsibility to pay for the split analysis.

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Split-sample Analysis: (Not alcohol)

The employee may request that a confirmation test on a specimen found positive for drugs (not alcohol) be conducted. The analysis of the split sample (sample "B") shall be obtained from a separate, unrelated certified laboratory chosen by the employee and shall be at the employee's expense.

The request by the employee must be made within 72 hours. The employee shall notify a Designated Employer Representative or call 952-447-6025 and ask for Tom Stockert.

No medical review of an alcohol positive will occur.

**NO MEDICAL EXPLANATION FOR ALCOHOL IN YOUR SYSTEM WILL BE
ACCEPTED**

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State-Specific Policy Addendum California

Summary

Abhe & Svoboda, Inc. (ASI) will comply with all state rules. California's drug testing restrictions stem from a Supreme Court decision. The law limits random testing based on job function to safety-sensitive jobs.

Beginning January 1, 2024, it will be unlawful for ASI to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon any of the following:

- (1) The person's use of cannabis off the job and away from the workplace. This paragraph does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid preemployment drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites.

- (2) An employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine or other bodily fluids.

This addendum applies only to those employees assigned to work at any California site. In addition to these rules, all employees must comply with the ASI's general substance abuse policies. Where state rules conflict with the general ASI policies, state rules will govern.

THIS ADDENDUM IS INCORPORATED INTO AND MADE A PART OF THE ASI GENERAL SUBSTANCE ABUSE TESTING POLICY.

Policy & Procedural Matters

1. Who will be tested?

The ASI's General Substance Abuse policy will be followed, except as noted below:

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- A. Applicants: All individuals applying for employment will be tested once an employment offer has been made.

All applicants will not be allowed to begin work until the drug test results have been reported.

- B. Employees: Where appropriate and in accordance with state rules (court decisions), those in safety-sensitive positions will be required to submit to drug testing on a random basis.

Additional testing under appropriate circumstances may be required as ASI deems necessary.

2. What will ASI test for?

ASI will test for those illegal drugs or alcohol as circumstances warrant. ASI's general policy will be followed.

This State recognizes the medical and personal use of marijuana. The State Supreme Court has ruled that the law does not apply to the private workplace.

3. When will ASI require a test?

ASI's General Substance Abuse policy will be followed, except as noted below:

- A. Pre-employment testing: All individuals applying for employment will be tested once an employment offer has been made.

All applicants will not be allowed to begin work until the drug test results have been reported.

- B. Reasonable suspicion: Any employee suspected of using or being under the influence of a controlled substance or alcohol will be removed from their assigned duties and must submit to a drug or alcohol test.

Reasonable suspicion is an objective standard. While the standard is not difficult to meet, it necessarily requires a showing of specific objective facts and rational inferences from those facts supporting the conclusion that an employee had used or was under the influence of intoxicants.

Procedural steps will be provided if such a test is needed.

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- C. Post-accident: Any employee involved in a work-related accident or injury will be required to submit to a drug test. The ASI's General policy will be followed.
- D. Random testing: Limited - Where appropriate and in accordance with State rules, those in safety-sensitive positions will be required to submit to drug testing on a random basis.

Additional testing under appropriate circumstances may be required as ASI deems necessary.

4. Where will testing be done?

State law does not address this issue; therefore, ASI's general policy will apply.

5. How will testing be done?

- A. No observed collections will occur;
- B. "Reliable methods" will be used to test; (not defined)
- C. All positive results will be confirmed by an independent methodology utilizing GC/MS or a similar approved method.

Otherwise, ASI's general policy will apply.

6. Key Procedures

Necessary program implementation procedures stemming from court interpretations will be followed and include the following:

1. ASI will make employees aware of the ASI policy. (It is suggested that the written policy either be handed to the employee or sent to them by certified mail; notice of the policy should also be posted.)
2. Applicants will not begin work until their pre-employment test result is received.
3. Employees will be warned that the use of medications obtained from/in foreign countries could result in a positive test.
4. Tests will not be scheduled for employees off-duty.
5. ASI will keep all medical information and drug testing records in separate confidential files.

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ASI will not request any medical information other than the test results from the service provider conducting the test.

7. Consequences

State law does not address this issue; therefore, ASI's general policy will apply.

San Francisco, CA Testing Limitations

Employers within the city limits of San Francisco must follow the city ordinance limiting employer action related to drug and alcohol testing (Police Code art 33a).

Sec. 3300A.5 of the ordinance states as follows:

No employer may demand, require, or request employees to submit to, to take or to undergo any blood, urine, or encephalographic test in the body as a condition of continued employment. Nothing herein shall prohibit an employer from requiring a specific employee to submit to blood or urine testing if:

- a. The employer has reasonable grounds to believe that an employee's faculties are impaired on the job; and,
- b. The employee is in a position where such impairment presents a clear and present danger to the physical safety of the employee, another employee or to a member of the public; and,
- c. The employer provides the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by State licensed independent laboratory/testing facility and provides the employee with a reasonable opportunity to rebut or explain the results.

In conducting those tests designed to identify the presence of chemical substances in the body, and not prohibited by this Section, the employer shall ensure to the extent feasible that the test only measures and that its records only show or make use of information regarding chemical substances in the body which are likely to affect the ability of the employee to perform safely his or her duties while on the job.

Under no circumstances may employers request, require or conduct random or ASI-wide blood, urine or encephalographic testing.

In any action brought under this Article alleging that the employer had violated this Section, the employer shall have the burden of providing that the requirements of Subsections (a), (b) and (c) as stated above have been satisfied.

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(Added by Ord. 527-85, App. 12/2/85)

Per Sec 3300A.7 - Nothing in this Article shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours, or restrict an employer's ability to discipline employees for being under the influence of intoxicating substances during work hours.

Per Sec 3300A.10 – Positions covered by a Collective Bargaining Agreement (CBA) are excluded from the ordinance.

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State-Specific Policy Addendum Connecticut

Summary

Connecticut has a mandatory workplace drug testing law (Code Sec. 31- 51t to 31-51bb). The law was first enacted in 1987. Additionally, the *Connecticut Palliative Use of Marijuana Act* (PUMA) (Conn. Gen. Stat. §21a-408 *et seq.*) places limitations on ASI actions against medical marijuana users.

On June 22, 2021, SB 1201 of the Special Legislative Session was signed into law by Connecticut Governor Ned Lamont. The "*Responsible and Equitable Regulation of Adult-Use Cannabis Act*." ("RERACA") (Conn. Gen. Stat. Ch. 420h, §21a-422 *et seq.*) legalized the possession and consumption of cannabis by those 21 years old and older. Notable for employers, the law defines and creates new protections for employees who use cannabis off-duty, except those in exempt positions like firefighters and law enforcement and specific industries like construction, education, and healthcare.

ASI will comply with all state laws. Connecticut's drug testing law addresses urinalysis only. The law limits urinalysis testing to pre-employment when meeting certain conditions, reasonable suspicion, and random - if approved by the Department of Labor.

ASI will not refuse to hire a person or discharge, penalize or threaten an employee solely on the basis of such person's or employee's **status** as a qualifying patient. ASI does prohibit the use of intoxicating substances, including cannabis, on ASI premises and during work hours and will discipline an employee for violating these rules.

This Addendum applies only to those employees assigned to work at any Connecticut site. In addition to these rules, all employees must comply with ASI's general substance abuse policies. State rules will govern where state rules conflict with the general Company policies.

Definitions applicable to legalized cannabis use can be found in APPENDIX "A."

**THIS ADDENDUM IS INCORPORATED INTO AND MADE A PART OF ASI'S GENERAL
SUBSTANCE ABUSE TESTING POLICY.**

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Policy & Procedural Matters

ASI policy will be prepared in writing and made available to each employee in either physical or electronic format. Applicants for employment will have access to either a physical or electronic policy format once an offer has been made.

Generally, and in addition to ASI's Substance Abuse Testing Policy, ASI will not accommodate an employee's: (1) Performance of duties while under the influence of cannabis, or (2) possession, use, or otherwise consumption of cannabis while performing assigned duties or on ASI premises, except possession of palliative cannabis by a qualifying patient.

1. Who will be tested and when?

- A. ASI will require drug urinalysis testing of prospective employees and employees under other approved conditions (see below - *When*).
- B. State law permits testing per DOT rules of drivers of vehicles weighing between 10,000 and 26,000 pounds, mechanics that service such vehicles, and forklift operators; if applicable.
- C. Although the use of cannabis is legal for adults 21 years old or older, ASI may test individuals in "exempted positions" for cannabis. For a complete list of exempted positions, see APPENDIX "A." Generally, an exempt position includes those with the potential to adversely impact the **health or safety** of employees or members of the public in the determination of ASI.

2. What will ASI test for?

State law only addresses drug testing, not alcohol (although alcohol use is mentioned as a possible basis for reasonable suspicion testing, and the law specifically states employers are not limited in prohibiting "intoxicants" at work or disciplining an employee for being under the influence of such intoxicants). ASI will test for illegal drugs as circumstances warrant.

Note: Under RERACA, a drug test of an individual that yields a positive result **solely** for 11-nor-9-carboxy-delta-9-tetrahydrocannabinol **shall not be construed**, without other evidence, **as proof that such individual is under the influence of or impaired by cannabis**.

3. When will ASI require a test?

ASI will follow state law and ONLY test under the following circumstances, if applicable and at ASI's discretion.

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A. **Prospective employees** when the following conditions are met:

- i. Prospective employee is given written notice at the time of application that there will be a test;
- ii. Tests are conducted per state law;
- iii. Prospective employee is given a copy of any positive urinalysis drug test result.

B. **Reasonable suspicion** that the employee is under the influence of a drug or alcohol, adversely affecting job performance.

Reasonable suspicion of cannabis: ASI may take appropriate employment action when there is reasonable suspicion of an employee's usage of cannabis while engaged in the performance of the employee's work responsibilities at the workplace or on call or if ASI determines that an employee manifests specific, articulable symptoms of drug impairment while working at the workplace or on call that decreases or lessens the employee's performance of the duties or tasks of the employee's job position, including, but not limited to:

- i. symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment of machinery,
- ii. disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property,
- iii. disruption of a production or manufacturing process, or
- iv. carelessness that results in any injury to the employee or others.

C. **Random:** Random testing will be limited only to "**high-risk**" or "**safety-sensitive occupations**" pre-approved by the state Department of Labor and only if ASI chooses to do so.

D. As part of an Employee Assistance Program (EAP).

4. **Where will testing be done?**

State law does not address this issue; therefore, ASI's general policy will apply.

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5. How will testing be done?

- A. No observed collections will occur;
- B. "Reliable methods" will be used to test; (not defined by state law)
- C. All positive results will be confirmed by an independent methodology utilizing GC/MS or similar approved method.

6. Consequences

ASI will not refuse to hire a person or discharge, penalize or threaten an employee solely on the basis of such person's or employee's **status** as a qualifying medical marijuana patient.

A test result which reveals 11-nor-9-carboxy-delta-9-tetrahydrocannabinol shall not form the sole basis for refusal to employ or to continue to employ or otherwise penalize such prospective or existing employee unless:

- A. failing to do so would put the Employer in violation of a federal contract or cause it to lose federal funding,
- B. the Employer reasonably suspects an employee's usage of cannabis while engaged in the performance of the employee's work responsibilities,
- C. the employee manifests specific, articulable symptoms of drug impairment while working that decrease or lessens the employee's performance of the duties or tasks of the employee's job position, including, but not limited to:
 - i. symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior or negligence or carelessness in operating equipment of machinery,
 - ii. disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property,
 - iii. disruption of a production or manufacturing process, or
 - iv. carelessness that results in any injury to the employee or others, or such drug test was pursuant to an approved random drug testing policy.

In all other instances, ASI's general policy will apply.

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Key Court Cases

Compliance Issues

1. *Tomick v. United Parcel Serv., Inc.*, where among other issues, the Court concluded that Section 31–51x, in plain language, prohibits an employer from requiring an employee to submit to a urinalysis drug test without reasonable suspicion. (After a long series of cases, the Employer paid over \$450,000, and the supervisor involved in the issue personally paid \$50,000). Applying the plain and unambiguous mandate of the statute to the facts of this case, we determine that the defendant required the plaintiff to submit to a urinalysis drug test. Therefore, the Court correctly decided that the plaintiff had a cause of action under § 31–51x.

Schofield v. Loureiro Engineering Associates, Inc. Conn. Super. Court, (Doc. No. CV-14-6024702-S, 2015), where the Court concluded that the state's drug testing law (§31-51u *et seq.*) did not apply to hair or oral fluid tests.

Cannabis Issues

Noffsinger v. SSC Niantic Operating Company, LLC (No.3;16-CV-01938). On September 5, 2018, a federal district court in Connecticut ruled that the Federal Controlled Substances Act (CSA) did not preempt Connecticut's State Medical Marijuana law. The Court determined that an employer violated the anti-discrimination provision of the medical marijuana law when it withdrew its offer of employment due to the applicant's status as a medical marijuana patient.

Workers Compensation Intoxication Defense (Voluntary)

Under appropriate circumstances, ASI will raise the following defenses: Sec. 31-275(1)(C) & Sec. 31-284(a).

Sec. 31-275. Definitions. As used in this chapter, unless the context otherwise provides:

- (1) "Arising out of and in the course of his employment" means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the Employer upon the Employer's premises, or while engaged elsewhere upon the Employer's business or affairs by the direction, express or implied, of the Employer, provided:

* * *

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(C) In the case of an accidental injury, a disability or a death due to the use of alcohol or narcotic drugs shall not be construed to be a compensable injury;

* * *

Sec. 31-284. Basic rights and liabilities. Civil action to enjoin the noncomplying Employer from entering into employment contracts. Notice of availability of compensation.

(a) . . . compensation shall not be paid when the personal injury has been caused by the willful and serious misconduct of the injured employee or by his intoxication.



Unemployment Claim Defense (Voluntary)

Under appropriate circumstances, ASI will raise the following defenses: Sec. 31-225(a)

Sec. 31-225a. Definitions; employers' experience accounts; noncharging provisions; benefit ratio; rates of contribution; assessments to pay interest due on federal loans and to reimburse advance fund; fund balance tax rate; notice to employers; multiple employers; employers' quarterly reports; inspection of records; electronic payments.

* * *

(c) (1)

(E) If the administrator finds that (i) an individual's most recent separation from a base period employer occurred under conditions which would result in disqualification by reason of subdivision (2), (6) or (9) of subsection (a) of section 31-236, or (ii) an individual was discharged for violating an employer's drug testing policy, provided the policy has been adopted and applied consistent with sections 31- 51t to 31-51aa, inclusive, section 14-261b and any applicable federal law, no benefits paid thereafter to such individual with respect to any week of unemployment which is based upon wages paid by such Employer with respect to employment prior to such separation shall be charged to such Employer's account, . . ."

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APPENDIX "A"

Definitions applicable to legalized cannabis (marijuana) use:

Sec. 21a-422o. (Note: This section took effect on July 1, 2022.) Regulation of cannabis in the workplace. **Definitions.** As used in this section and sections 21a-422p to 21a-422s, inclusive:

1. "Employee" means any individual employed or permitted to work by an employer or an independent contractor;
2. "Employer" has the same meaning as provided in sections 31-58;
3. "Exempted employer" means an employer whose primary activity is:
 - a. mining, including, but not limited to, an employer with a two-digit North American Industry Classification System code of 21,
 - b. utilities, including, but not limited to, any employer with a two-digit North American Industry Classification System code of 22,
 - c. construction, including, but not limited to, an employer with a two-digit North American Industry Classification System code of 23,
 - d. manufacturing, including, but not limited to, an employer with a two-digit North American Industry Classification System code of 31, 32, or 33,
 - e. transportation or delivery, including, but not limited to, an employer with a two-digit North American Industry Classification System code of 48 or 49,
 - f. educational services, including, but not limited to, an employer with a two-digit North American Industry Classification System code of 61,
 - g. health care or social services, including, but not limited to, an employer with a two-digit North American Industry Classification System code of 62,
 - h. justice, public order, and safety activities, including, but not limited to, an employer with a four-digit North American Industry Classification System code of 9221, or
 - i. national security and international affairs, including, but not limited to, those with a three-digit North American Industry Classification System code of 928.

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As used in this subdivision, "Employer" includes any subdivision of a business entity that is a standalone business unit, including, but not limited to, having its own executive leadership, having some or significant autonomy and having its own financial statements and results;

4. "Exempted position" means a position:
 - a. As a firefighter;
 - b. As an emergency medical technician;
 - c. As a police officer or peace officer, in a position with a law enforcement or investigative function at a state or local agency or in a position with the Department of Correction involving direct contact with inmates;
 - d. Requiring operation of a motor vehicle, for which federal or state law requires any employee such position to submit to screening tests, including, but not limited to, any position requiring a commercial driver's license or any position subject to 49 CFR 40, 14 CFR 120 or 49 CFR 16;
 - e. Requiring certification of completion of a course in construction safety and health approved by the federal Occupational Safety and Health Administration;
 - f. Requiring a federal Department of Defense or Department of Energy national security clearance;
 - g. For which the provisions of sections 21a-422p to 21a-422s, inclusive, are inconsistent or otherwise in conflict with the provisions of an employment contract or collective bargaining agreement;
 - h. For which the provisions of sections 21a-422p to 21a-422s, inclusive, would be inconsistent or otherwise in conflict with any provision of federal law;
 - i. Funded in whole or in part by a federal grant;
 - j. Requiring certification of completion of a course in construction safety and health approved by the federal Occupational Safety and Health Administration;
 - k. Requiring the supervision or care of children, medical patients or vulnerable persons;
 - l. With the potential to adversely impact the health or safety of employees or members of the public, in the determination of the Employer;

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- m. At a nonprofit organization or corporation, the primary purpose of which is to discourage use of cannabis products or any other drug by the general public; or
 - n. At an exempt employer;
5. "Exempted employee" means an employee holding an exempted position or working for an exempted employer;
 6. "On call" means a period of time for which an employee (A) is scheduled with at least twenty-four hours' notice by his or her Employer to be on standby or otherwise responsible for performing tasks related to his or her employment, either at the Employer's premises or other previously designated location by his or her Employer or supervisor to perform a work-related task, and (B) is being compensated for such scheduled time;
 7. "Work hours" means any period of time for which such employee is compensated by an employer and is performing job duties or is reasonably expected to be performing job duties; and
 8. "Workplace" means the Employer's premises, including any building, real property, and parking area under the control of the Employer, and area used by an employee while in the performance of the employee's job duties, and the Employer's vehicles, whether leased, rented, or owned.

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State-Specific Policy Addendum

Hawaii

Summary

Hawaii is a mandatory state, meaning there are rules applicable to private, non-regulated employers, who choose to test that must be followed. The focus of the law is on test procedures. The law requires that employers provide certain written notices and forms discussed below. Abhe & Svoboda's "core" policy for workplace drug and alcohol testing applies except where these rules differ.

**THIS ADDENDUM IS INCORPORATED INTO AND MADE A PART OF THE ASI GENERAL
SUBSTANCE ABUSE TESTING POLICY.**

Policy

- A. Rules do not specifically address the need for a policy.
 - B. If developed, ASI must give each individual to be tested, a written statement of the specific drugs to be tested, and a statement that over-the-counter and prescribed medications may cause a positive.
 - C. Statement at the time of testing must also indicate the individual to be tested has a right to refuse and the consequences of doing so.
-
-

Policy & Procedural Matters

1. Who will be tested?

State law does not address this issue; therefore, Abhe & Svoboda's general policy will apply.

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2. What will the ASI test for?

The term “drug” is defined as virtually any controlled substance, and ASI may test for any that director of health approves but specifically include:

- A. Amphetamines;
- B. Barbiturates;
- C. Benzodiazepines;
- D. Cocaine;
- E. Marijuana;
- F. Methadone;
- G. Methaqualone;
- H. Opiates;
- I. PCP;
- J. Propoxyphene; and,
- K. Alcohol.

The statement that ASI must give to each individual before testing must include the specific drugs to be tested – if not included in the statement can’t test for it.

3. When will ASI require a test?

State law does not address this issue; therefore, Abhe & Svoboda’s general policy will apply.

4. Where will testing be done?

On-site or use of licensed/qualified lab is required. If tested in this State, the lab must be licensed by State; if outside the State must be SAMHSA-certified lab. Extensive regulations apply.

5. How will testing be done?

On-site (instant) testing is permitted for applicants AND employees.

Specimen collection must follow the detailed rules set forth in the HI regulations.

All testing must be conducted by a lab licensed in the State or certified by SAMHSA – approved by the State.

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- A. Only those qualified by the State Board of Health may collect a sample.
- B. The cutoff levels for the typical HHS/DOT drugs are the same except for cocaine and amphetamines; cutoff levels for non-HHS/DOT substances are detailed in the Regulations.
- C. Sample is limited by regulation to be:
 - i. Drug Testing: urine, saliva or hair.
 - ii. Alcohol: Cutoff level is 0.02; Breath or saliva – urine only in specific post-rehab and during rehab testing.
- D. Only licensed facilities may test samples.
- E. Single-use, “instant” test devices are permitted.
- F. Direct-observed collections are allowed.
- G. An opportunity must be provided for EE/App to provide relevant info.
- H. All positive lab results MUST go to an MRO.

6. Consequences

State law does not address this issue; therefore, Abhe & Svoboda’s general policy will apply. It is recommended that the Policy indicate the consequences for either refusal or positive test.

Other Requirements

Costs - Employer must pay all costs related to required tests.

Notice of Result - The MRO shall notify ASI and the Employee/Applicant of the results.

Re-Test - Not specifically addressed other than to indicate any retest is not subject to a specific cutoff but must be sufficient to confirm the presence of the drug/metabolite.

Confidentiality - All documents, records and data must be maintained confidentially except as permitted by law.

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On-Site Testing Procedures

Definition (§329B-2):

"Substance abuse on-site screening test" means a portable substance abuse test that meets the requirements of the United States Food and Drug Administration for commercial distribution or is manufactured by a facility that is minimally certified as meeting the ISO 13485 standard established by the International Organization for Standardization and which may be used by an employer in the workplace.

On-site screening test administration (§329B-5.5):

- A. Can test applicants OR employees using on-site screening.
- B. Must test per manufacturers package "insert."
- C. Indication of the presence of any drug/metabolite CAN NOT be used for any employment action (for applicant or employee).
- D. Must follow test process for lab testing (provide statement, confirm results, etc.).
- E. Once on-site screen indicates presence of any drug/metabolite ASI MUST have the donor report w/in 4 hours to a licensed lab.
- F. Employer shall bear all costs.
- G. If individual being tested fails to show at lab w/in 4 hours then will be considered to have failed/refused the test, PROVIDED employer gave written statement to the individual being tested indicating:
 - i. Employer followed on-site test procedures;
 - ii. Employee or applicant are informed of their right to refuse to be tested; and,
 - iii. The consequences of refusal
- H. The "operator" who administered the on-site test had been trained (get proof of training).
- I. All information reference the on-site test is kept confidential.

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State-Specific Policy Addendum Oklahoma

Summary

Oklahoma is a mandatory State, meaning there are rules applicable to private, non-regulated employers, who choose to test that must be followed. The law, which was first enacted in 1993 and last amended 2012, requires testing according to a detailed written policy and procedures, which are specified here.

This Addendum applies only to those employees assigned to work at any Oklahoma site. In addition to these rules, all employees must comply with ASI's general substance abuse policies. Where these rules conflict with the general Abhe & Svoboda, Inc.'s substance abuse policy, these rules will govern. Otherwise, employees must adhere to both.

**THIS ADDENDUM IS INCORPORATED INTO AND MADE A PART OF THE ASI GENERAL
SUBSTANCE ABUSE TESTING POLICY.**

Policy Requirements

- A. Will be written and administered according to Oklahoma statute 40 O.S. 551 – 563.
- B. ASI's general policy and this addendum will be given to each employee or applicant either by:
 - a. Hand delivered;
 - b. US mail;
 - c. Email or ASI web/intranet;
- C. Must post copy in prominent work site location.

See Attachment "A" containing the current definitions listed in O. S. section 552 and applicable to this policy and addendum. All attachments are hereby incorporated into and made a part of this policy and addendum.

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Policy & Procedural Matters

1. Who will be tested?

ASI may test under the following circumstances:

- A. Applicants;
- B. For cause (suspicion);
- C. Post-accident;
- D. Random;
- E. RTD, fitness for duty; and,
- F. Follow-up to treatment (2 yr. limit).

2. What will the ASI test for?

ASI may test for any Controlled Substance in Sch. I - III, but only those in Schedules I – III and alcohol.

Cutoff levels to determine a positive result for drugs are set by the Oklahoma State Board of Health. Alcohol - positive is considered any result at or above 0.02.

3. When will the ASI require a test?

ASI may test under these following circumstances:

- A. Applicants: Post-offer only.
- B. For Cause: ASI may request or require an employee to undergo drug or alcohol testing at any time there is reasonable belief that an employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:
 - i. drugs or alcohol on or about the employee's person or in the employee's vicinity,
 - ii. conduct on the employee's part that suggests impairment or influence of drugs or alcohol,

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- iii. a report of drug or alcohol use while at work or on duty,
- iv. information that an employee has tampered with drug or alcohol testing at any time,
- v. negative performance patterns, or
- vi. excessive or unexplained absenteeism or tardiness;

C. Post-Accident: If an employee or another person has been injured at work or property damaged (including equipment);

WARNING: Oklahoma law section 554 provides: “For purposes of workers’ compensation no employee who tests positive for the presence of [“huffing”] substances, alcohol, illegal drugs, or illegally used chemicals, or refuses to take a drug or alcohol test required by ASI, shall be eligible for such compensation.”

D. Random: An employee or all members of an employment classification or group may be subject to random testing.

E. Fitness-RTD testing: As part of routine examinations or return from leave.

F. Post-rehab/Return to Work Follow-up testing: An employee may be subject to testing for up to two (2) years after returning to work after a positive test or treatment for drug or alcohol dependence.

4. Where will testing be done?

ASI will only contract with and allow testing in a laboratory qualified/licensed per OK law; all samples initially positive will be confirmed; results will be available for copying.

5. How will testing be done?

All testing will be conducted per statute and regulations.

Note: These are the highlights of the test process – details are attached as Attachment “B.”

- A. Only those qualified by the State Board of Health may collect a sample.
- B. The cutoff levels for cocaine and amphetamines are different than federal cutoffs.
- C. Sample is limited by regulation to be:

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- i. Drug Testing: urine, saliva or hair
 - ii. Alcohol: Breath or saliva – urine only in specific post-rehab and during rehab testing.
- D. Only licensed facilities may test samples.
- E. Single-use, “instant” test devices are permitted.
- F. NO direct observed collections allowed.
- G. An opportunity must be provided for employees or applicants to provide relevant info.

6. Consequences

Unless occupying or applying for a safety-sensitive position, an individual authorized to use medical marijuana, or a positive drug test for marijuana alone will not result in adverse employment action. However, if the medical marijuana employee uses, possess, consumes or is under the influence of marijuana while at work or while performing employment obligations, discipline may be imposed. Otherwise, there are no limitations (Policy MUST indicate discipline for either refusal or positive test).

Medical marijuana:

ASI will not refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of such applicant's or employee's status as a medical marijuana licensee; and,

ASI will not refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of a positive test for marijuana components or metabolites, unless:

- a. the applicant or employee is not in possession of a valid medical marijuana license,
- b. the licensee possesses, consumes or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations, or
- c. the position is one involving safety-sensitive job duties, as such term is defined in APPENDIX “C” below.

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Further, ASI will not:

1. Permit or accommodate the use of medical marijuana on the property or premises of any place of employment or during hours of employment; and,
2. Reimburse a person for costs associated with the use of medical marijuana.

Other Requirements

1. Costs

ASI will pay all costs related to required tests; employees must pay for the costs related to the “split” or retest sample - independent test; BUT if not confirmed ASI will reimburse those costs.

All required test time is considered “on duty” time for compensation and benefits purposes.

2. Notice of Test Result

- A. No specific requirements other than the need to make all test related records (including test result) available for copying to applicant and employee.
- B. The test facility will provide all relevant documents to any individual tested upon request.

3. Retest

- A. All collections must be sufficient to allow for independent, retest (“split”) assessment;
- B. An applicant or employee may, within 24 hours after receiving notice of a confirmed positive, request an independent assessment of the separate portion of the sample collected;
- C. An applicant or employee shall pay costs of a separate confirmation; and,
- D. If independent assessment reverses the original findings, ASI will reimburse the applicant or employee for the costs of the retest.

4. Appeal Process

ASI will explain what, if any, appeal process exists such as who to contact, how, by when, etc.

5. Collective Bargaining

All collective bargaining agreements must meet the minimal standards of Oklahoma law.

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6. Confidentiality

All documents records and data must be maintained confidentially except as permitted by law.

7. Drugs to Test

As permitted and limited by law, ASI will only test for and take disciplinary action on schedule I, II, or III substances.

8. Applicant Testing

The applicant testing section of the law must be read in conjunction with the definition of an applicant, which includes a person who receives a conditional offer.

9. Follow-up Testing

Follow-up tests are limited to two (2) years after the employee returns to work.

10. Cutoff Levels

The urine cutoff levels for amphetamines and cocaine differ from federally recommended levels.

Workers' Compensation Intoxication Defense (Voluntary)

Where appropriate, ASI will raise the following defense to a workers' compensation claim:

Sec. 554 – Title 40

* * *

Post-accident testing: ASI may require an employee to undergo drug or alcohol testing if the employee or another person has sustained an injury while at work or property has been damaged while at work, including damage to equipment. For purposes of workers' compensation, no employee who tests positive for the presence of ["huffing"] substances, alcohol, illegal drugs, or illegally used chemicals, or refuses to take a drug or alcohol test required by ASI, shall be eligible for such compensation;

As noted above ASI is not required to, nor will it, reimburse a person for costs associated with the use of medical marijuana to treat a work-related injury.

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Unemployment Claim Defense (Voluntary)

Where appropriate, ASI will raise the following defense to an unemployment claim:

§ 2-406.1. Discharge for refusal to undergo drug or alcohol testing or positive test

- 1 An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a positive drug or alcohol test conducted in accordance with the provisions of the Standards for Workplace Drug and Alcohol Testing Act shall be considered to have been discharged for misconduct and shall be disqualified for benefits pursuant to the provisions of Section 2-406 of this title.
2. In any challenge to a positive drug or alcohol test, the claimant has the burden to prove that the test was not properly conducted. ASI will provide the chain of custody documentation at the request of any claimant challenging his or her test result.
3. When the claimant fails to request a confirmation test pursuant to Section 556 of this title, the claimant shall not be eligible for benefits.
4. In any claim brought by the discharged employee for compensation, a written report of the drug or alcohol test results shall be accepted as prima facie evidence of the administration and results of the drug or alcohol test. If challenged by the claimant as provided in paragraph 2 of subsection A of this section, the written report of the drug or alcohol test results shall be acceptable for presentation as evidence with the chain of custody of the sample properly documented.

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APPENDIX "A"

Title 40. Labor

Chapter 15 – Standards for Workplace Drug and Alcohol Testing Act

Section 552

Sec. 40-552. Definitions

As used in the Standards for Workplace Drug and Alcohol Testing Act:

1. "Alcohol" means ethyl alcohol or ethanol;
2. "Applicant" means a person who has applied for a position with an employer and received a conditional offer of employment;
3. "Board" means the State Board of Health;
4. "Confirmation test" means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol test on the same sample and which uses different chemical principles and is of equal or greater accuracy than the prior drug or alcohol test. Where a breathalyzer test is utilized, a confirmation test means a second sample test that confirms the prior result. Where a single-use test is utilized, a confirmation test means a second test confirmed by a testing facility;
5. "Department" means the State Department of Health;
6. "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein;
7. "Drug or alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or its metabolites or alcohol in a person's bodily tissue, fluids or products. Adulteration of a specimen or of a drug or alcohol test shall be considered as a refusal to test;
8. "Employee" means any person who supplies labor for remuneration to his or her employer in this state and shall not include an independent contractor, subcontractor or employees of an independent contractor; provided, however, an independent contractor, subcontractor, or employees of an independent contractor, may be subject to a workplace drug or alcohol testing policy under the terms of the contractual agreement when the drug or alcohol testing policy applies to other workers at the job site or workers who are in the same or similar classification or group;

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9. "Employer" means any person, firm, corporation, partnership, association, nonprofit organization or public employer, which has one or more employees within this State, or which has offered or may offer employment to one or more individuals in this State;
10. "Public employer" means the State of Oklahoma or any political subdivision thereof, including any department, agency, board, commission, institution, authority, public trust, municipality, county, district or instrumentalities thereof;
11. "Review officer" means a person, qualified by the State Board of Health, who is responsible for receiving results from a testing facility which have been generated by an employer's drug or alcohol testing program, and who has knowledge and training to interpret and evaluate an individual's test results together with the individual's medical history and any other relevant information;
12. "Sample" means tissue, fluid or product of the human body chemically capable of revealing the presence of drugs or alcohol in the human body; and,
13. "Testing facility" means a facility which provides laboratory services to test samples for the presence of drugs or alcohol.

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**APPENDIX “B”
(Test Procedures)**

Title 40. Labor

Ch. 15 – Standards for Workplace Drug and Alcohol Testing Act

Section 559 (With related regulations inserted;

NOTE: The Regulations have not been updated since 2008. The following are key points and procedures. (A complete copy of the regulations is available upon request.)

Collection Issues:

§40-559 Sample collection and testing Conditions.

All sample collection and testing for drugs and alcohol pursuant to the provisions of this act shall be conducted in accordance with the following conditions:

1. Samples shall be collected and tested only by individuals deemed qualified by the State Board of Health and may be collected on the premises of the employer;
2. Only samples deemed appropriate by the State Board of Health for drug and alcohol testing shall be collected.

[Related Regulation]

310:638-1-4. Body specimens appropriate for testing

1. Drugs
 - a. Initial tests. Urine, saliva or hair shall be used for the initial test for all drugs.
 - b. Confirmation tests. Urine, saliva or hair shall be used for the confirmation test for all drugs.
2. Alcohol.
 - a. Initial tests. Breath or saliva shall be used for the initial test for alcohol. Blood may be used for initial testing as described in OAC 310:638-7-4(b)(4).
 - b. Confirmation tests. Breath or blood shall be used for the confirmation test for alcohol.
 - c. Rehabilitation/post-rehabilitation tests. For alcohol testing which meets the criteria [of these rules], urine may be used as the specimen for initial and/or confirmation testing.
3. The collection of samples shall be performed under reasonable and sanitary conditions;

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4. A sample shall be collected in sufficient quantity for splitting into two separate specimens, pursuant to rules of the State Board of Health, to provide for any subsequent independent analysis in the event of challenge of the test results of the main specimen;
5. Samples shall be collected and tested with due regard to the privacy of the individual being tested. In the instances of urinalysis, no employer or representative, agent or designee of the employer shall directly observe an applicant or employee in the process of producing a urine sample; provided, however, collection shall be in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
6. Sample collection shall be documented, and the documentation procedures shall include:
 - a. labeling of samples so as reasonably to preclude the probability of erroneous identification of test results, and
 - b. an opportunity for the applicant or employee to provide notification of any information which the applicant or employee considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information;
7. Sample collection, storage, and transportation to the testing facility shall be performed so as reasonably to preclude the probability of sample contamination or adulteration.

Lab Issues:

§40-559 continued:

8. Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by Board rule, at the cutoff levels as determined by Board rule, before the result of any test may be used as a basis for refusal to hire a job applicant or any action by an employer pursuant to Section 12 of this act; and
9. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

§40-557. Testing standards and procedures – Implementation and enforcement – Rules.

- A. The State Board of Health shall have the power and duty to promulgate, prescribe, amend and repeal rules for the licensure and regulation of testing facilities, which shall include, but not be limited to, the following:

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1. Qualifications of testing facilities which shall include the requirement that facilities doing urine analysis tests be certified for forensic urine drug testing pursuant to guidelines or regulations of the federal Department of Health and Human Services or be accredited for forensic urine drug testing by the College of American Pathologists or other organizations recognized by the State Board of Health;
 2. Qualifications of testing facility personnel; and
 3. Procedures for the testing facility to provide the necessary documentation of testing procedures and test results to the employer requesting testing services as may be required by a court or administrative proceeding.
- B. Nothing in the Standards for Workplace Drug and Alcohol Testing Act shall be construed as prohibiting an employer from adopting a policy which allows for testing for drugs or alcohol by another method which is reasonably calculated to detect the presence of drugs or alcohol, including, but not limited to, breathalyzer testing, testing by use of a single-use test device, known as an on-site or quick testing device, to collect, handle, store and ship a sample collected for testing.

§40-558. Licensing of testing facilities – Fees – Administrative fines.

- A. On and after July 1, 1994, no testing facility shall provide laboratory services to an employer to test for the presence or absence of drugs or alcohol unless it meets the qualifications established for testing facilities pursuant to Section 7 of this act and is licensed by the State Department of Health to perform such tests. The State Board of Health shall promulgate rules relating to the issuance of such license, including rules governing license revocation, suspension and nonrenewal.
- B. The fees for licensure of testing facilities by the State Department of Health shall be set by the State Board of Health and shall not be more than One Hundred Fifty Dollars (\$150.00) annually.
- C. Any testing facility providing laboratory services to an employer to test for the evidence of drugs or alcohol which is not licensed by the State Department of Health pursuant to this section shall be subject to an administrative fine of not more than Five Hundred Dollars (\$500.00) for each offense. Each test performed by the unlicensed testing facility in violation of this section shall constitute a separate offense.

[Related Regulation]

310:638-1-6. Cutoff levels for **initial** drug screening tests in urine

- (a) The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these drugs or their metabolites:
 - (1) marijuana metabolites: 50 ng/ml.

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(2) cocaine metabolites: 300 ng/ml (NOTE: Federal level is 150 ng/ml).

(3) opiates and metabolites: 2000 ng/ml; opiates and metabolites include the following:

(A) codeine;

(B) heroin; and,

(C) morphine.

(4) semi-synthetic and synthetic narcotics: 300 ng/ml

(A) hydrocodone;

(B) hydromorphone;

(C) meperidine (immunoassay unavailable, initial test level of 1000 ng/ml shall be used for meperidine)

(D) methadone;

(E) oxycodone; and,

(F) propoxyphene;

(5) phencyclidine: 25 ng/ml

(6) amphetamines: 1,000 ng/ml; amphetamines include the following: (NOTE: federal level is 500 ng/ml)

(A) amphetamines;

(B) methamphetamines;

(C) methylenedioxyamphetamine (immunoassay unavailable);

(D) methylenedioxymethamphetamine (immunoassay unavailable); and,

(E) phentermine.

(7) barbiturates: 300 ng/ml; barbiturates include the following:

(A) amobarbital;

(B) butalbital;

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- (C) pentobarbital;
- (D) secobarbital;
- (8) benzodiazepines: 300 ng/ml; benzodiazepines include the following:
 - (A) diazepam;
 - (B) chlordiazepoxide;
 - (C) alprazolam;
 - (D) clorazepate; and
- (9) methaqualone: 300 ng/ml.
 - (A) These test levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentrations.
 - (B) Drugs other than those listed shall be tested by scientifically established methods at scientifically established detection levels.

[Related Regulation]

310:638-1-7. Cutoff levels for drug **confirmation** testing in urine

- (A) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS), or an equivalent accepted method of equal or greater accuracy as approved by the Commissioner of Health, at the following cutoff levels for these drugs or their metabolites. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the testing facility record as "greater than the highest standard curve value."
 - (1) marijuana metabolites: 15 ng/ml (Delta-9-tetrahydrocannabinol-9-carboxylic acid)
 - (2) cocaine metabolites: 150 ng/ml (Benzoylecgonine) (NOTE: federal level is 100 ng/ml)
 - (3) opiates and metabolites: 2000 ng/ml; opiates and metabolites include the following:
 - (A) codeine;
 - (B) morphine;
 - (C) heroin (10 ng/ml for tests for 6-Acetylmorphine when the morphine concentration exceeds 2000 ng/mL);

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(4) semi-synthetic and synthetic narcotics: 300 ng/ml

- (A) hydrocodone;
- (B) hydromorphone;
- (C) meperidine; (confirmatory test level of 500 ng/ml shall be used for meperidine)
- (D) methadone;
- (E) oxycodone;
- (F) propoxyphene;

(5) phencyclidine: 25 ng/ml

(6) amphetamines: 500 ng/ml; amphetamines include the following: (NOTE: federal level is 250 ng/ml)

- (A) amphetamines;
- (B) methamphetamines; (Specimen must also contain amphetamine at a concentration of greater than 200 ng/mL)
- (C) methylenedioxyamphetamine;
- (D) methylenedioxymethamphetamine;
- (E) phentermine.

(7) barbiturates: 300 ng/ml; barbiturates include the following:

- (A) amobarbital;
- (B) butalbital;
- (C) pentobarbital;
- (D) secobarbital;

(8) benzodiazepines: 300 ng/ml; benzodiazepines include the following:

- (A) diazepam;
- (B) chlordiazepoxide;
- (C) alprazolam;

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(D) clorazepate; and

(9) methaqualone: 300 ng/ml.

(B) These test levels are subject to change by the Department as advances in technology or other considerations warrant identification of these substances at other concentration.

[Related Regulation]

310 6: 38-7-4. **Initial** alcohol screening tests

(a) Cutoff level for initial alcohol screening tests. An alcohol concentration of 0.02 or greater shall be considered a positive initial test for alcohol and shall be confirmed as required. A positive result obtained utilizing an alcohol screening device which meets the requirements at OAC 310:638-7-4(b) shall be considered a positive initial test for alcohol and shall be confirmed as required.

[Related Regulation]

310:638-7-5. Cutoff level and alcohol **confirmation** tests

All positive initial alcohol screening tests shall be confirmed using breath analyzed by an EBT or blood analyzed by gas chromatography (GC). A test performed on blood and analyzed by gas chromatography shall be considered a confirmed alcohol test.

An alcohol concentration of 0.02 or greater shall be considered a positive confirmation test for alcohol.

Medical Review Issues:

§40-552 Definitions (related sections)

10. "Review officer" means a person, qualified by the State Board of Health, who is responsible for receiving results from a testing facility which have been generated by an employer's drug or alcohol testing program, and who has knowledge and training to interpret and evaluate an individual's test results together with the individual's medical history and any other relevant information;

[Related Regulation]

310:638-1-9. Training and qualifications of review officers

(a) The Review Officer is a person responsible for receiving testing facility results generated by an employer's drug and alcohol testing program and who has knowledge of substance abuse disorders and has appropriate training to interpret and evaluate an individual's positive test result together with the individual's medical history and any other relevant biomedical information.

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(b) The Review Officer shall possess the following minimum qualifications:

- (1) Be licensed to practice medicine and surgery or osteopathic medicine or hold an earned doctoral degree from an accredited institution in clinical chemistry, forensic toxicology, or a similar biomedical science; and
- (2) Have completed at least twelve (12) hours of training appropriate for Review Officers provided by the Medical Review Officer Certification Council, American Association of Medical Review Officers, or another organization approved by the Commissioner of Health.

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**APPENDIX "C"
(Marijuana Rules)**

K. As used in this section:

1. "Safety-sensitive" means any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task or others including, but not limited to, any of the following:
 - a. the handling, packaging, processing, storage, disposal or transport of hazardous materials,
 - b. the operation of a motor vehicle, other vehicle, equipment, machinery or power tools,
 - c. repairing, maintaining or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage,
 - d. performing firefighting duties,
 - e. the operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation or distribution,
 - f. the extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment or transport of potentially volatile, flammable, combustible materials, elements, chemicals or any other highly regulated component,
 - g. dispensing pharmaceuticals,
 - h. carrying a firearm, or
 - i. direct patient care or direct childcare; and
 2. A "positive test for marijuana components or metabolites" means a result that is at or above the cutoff concentration level established by the United States Department of Transportation or Oklahoma law regarding being under the influence, whichever is lower.
- L. All smokable, vaporized, vappable and e-cigarette medical marijuana product inhaled through vaporization or smoked by a medical marijuana licensee are subject to the same restrictions for tobacco under Section 1-1521 of Title 63 of the Oklahoma Statutes, commonly referred to as the "Smoking in Public Places and Indoor Workplaces Act".

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**DRUG & ALCOHOL
ABUSE TESTING POLICY**

**(For Employees Performing Jobs Regulated under
DOT/FMCSA)**

**49 CFR Part 382
&
49 CFR Part 40**

**Effective
January 2023**

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Abhe & Svoboda, Inc.

**DRUG AND ALCOHOL ABUSE TESTING POLICY
for
Federally Regulated Employees**

1. STATEMENT OF PURPOSE AND POLICY

Employees are the most valued part of Abhe & Svoboda, Inc. (ASI). Their health and safety is a serious company concern. Drug use and alcohol misuse may pose a serious threat to employee health and safety. It is, therefore, the goal of ASI to prevent substance use or abuse from having an adverse effect on our employees. ASI maintains that the work environment is safer and more productive without the presence of illicit or inappropriate drugs or alcohol (referred to as "prohibited substances") in the body or on ASI or customer property. Furthermore, all employees have a right to work in a drug-free environment and to work with individuals free from the effects of prohibited substances. Employees who use or abuse prohibited substances are a danger to themselves, their co-workers, the public, and ASI's assets.

The federal government and many states have recognized the adverse impact of substance abuse by employees. ASI will follow federal guidelines when applicable, and all state laws as required in its commitment to maintaining a drug-free workplace.

All employees are advised that participating in ASI's drug and alcohol testing program is required. Those employees and applicants whose duties include safety-sensitive functions regulated by DOT/FMCSA must comply with rules issued by those agencies regarding drug and alcohol testing. Where the general company policy conflicts or differs from the DOT/FMCSA rules, the DOT/FMCSA rules will govern.

Specifically, it is the policy of ASI that the use, sale, purchase, transfer, possession or presence in one's system of any prohibited substance (except medications prescribed by a licensed physician), including alcohol, by any employee while on ASI premises, while engaged in ASI business, while operating ASI equipment, or while under the authority of ASI is strictly prohibited. ASI will notify and cooperate with law enforcement agencies in the investigation of any employee suspected of trafficking in illicit or inappropriate drugs. Any employee arrested for on-the-job possession of or trafficking in illicit or inappropriate drugs will be terminated.

As required by applicable federal rule, ASI will conduct pre-employment testing of all applicants ("Employee Applicants") for safety-sensitive positions. All employees in safety-sensitive positions may be subject to testing where circumstances establish that reasonable suspicion of prohibited substance use exists, following on-the-job accidents or injuries and for safety-sensitive workers, on a random basis.

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Any employee who tests positive will be subject to discipline up to and including termination. Any employee who refuses to comply with a proper request to submit to testing or who fails to cooperate in the test process will be terminated. Any employee represented by a collective bargaining agent may have additional rights under the current collective bargaining agreement.

These procedures are designed not only to detect violations of this policy but also to ensure fairness to each employee. Every effort will be made to maintain the dignity of employees or Employee-Applicants involved. Disciplinary action will, however, be taken as necessary.

Neither this policy nor any of its terms is intended to create a contract of employment or to alter the existing employment or contractual relationship in any way. Unless otherwise limited, ASI retains the sole right to change, amend or modify any term or provision of this policy without notice.

This policy is effective January 15, 2023 and supersedes all prior policies and statements relating to prohibited substances.

Further Information

Questions about ASI's DOT Drug and Alcohol Abuse Testing Program, including who is required to be included in it, may be directed to the Designated Employer Representative Tom Stockert at (952-447-6025).

2. APPLICABILITY

- A. **Definitions:** The definitions applicable to this policy and program procedures are derived from both Federal Motor Carrier Safety Administration rules (49 CFR part 382) and rules issued by the Office of the Secretary of Transportation (OST). (49 CFR part 40). The FMCSA rules essentially cover **who** must be tested and **when**; the OST rules detail **how** those tests must be done. The definitions applicable to both FMCSA and OST requirements are provided in APPENDIX "A" and "B" attached hereto and made a part hereof.
- B. **Applicable Covered Employees:** The DOT/FMCSA rules cover employees, including mechanics and contract labor personnel, whose duties are such that federal regulations require them to hold a Commercial Driver's License (CDL) in order to drive a commercial motor vehicle (CMV) on public highways, and who, during the course of the workday, operate or are expected to be in readiness to operate any vehicle that:
1. Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
 2. Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

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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 hazardous materials.

In addition to being subject to testing any time while at work for the use of illegal drugs, such individuals are subject to alcohol testing during those periods of time when they are currently performing, have recently performed, are about to perform, or are required to be in readiness to perform and immediately available to perform any of the following on-duty-safety sensitive duties as described in the DOT federal regulations, including:

- a. At a carrier's facility or any public property waiting to be dispatched,
- b. Inspecting, servicing, or conditioning a CMV,
- c. Driving a CMV,
- d. All time in or upon CMV except in a sleeper berth,
- e. Performing, supervising, assisting, or attending CMV loading or unloading, including processing paperwork,
- f. Performing post-accident duties,
- g. Repairing, obtaining assistance, or attending a disabled CMV.

It is ASI's policy that all drivers are considered to be immediately available to perform one or more of the above on-duty functions (a) through (g) and therefore are subject to pre-employment and random drug and alcohol testing, reasonable suspicion drug and alcohol testing, and follow-up drug and alcohol testing during all working hours, unless explicitly excused from all DOT on-duty functions.

No employee may consume alcohol four (4) hours before reporting to duty.

3. MANDATORY INQUIRY

Applicants for employment with ASI involving the operation of a CMV are required to identify all employers for the previous **three (3) years** for which the applicant has driven a CMV. From this list of past employers, ASI will contact past employers for the preceding three years. If any prior reports that the applicant had an alcohol test with a concentration of 0.04 or greater, a verified positive controlled substances test result, or a refusal to be tested during this period of time, the application will not be processed further until the applicant submits a specific, written authorization to release this information to ASI for review. Upon receipt of these records, ASI will forward them to a designated substance abuse professional for review. The purpose of this review is to verify that the applicant has not attempted to evade any required treatment and that other reinstatement requirements have been satisfied before the time the applicant sought employment at ASI. See "Clearinghouse" section below for additional requirements effective January 6, 2020.

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Review of Evaluation Records and Return-To-Duty Test Records

Specifically, records that are required to be maintained by previous companies will be requested in order to check three things:

1. ASI will verify that a determination was made by a substance abuse professional concerning the driver's need for assistance.
2. ASI will verify that the driver complied with all treatment recommendations of the substance abuse professional. If a follow-up testing program had been established, the current status of the applicant's completion of the program would be requested.
3. ASI will verify that the driver passed the required return-to-duty test before being allowed to perform any safety-sensitive functions. A pre-employment drug test may be used to satisfy return-to-duty drug test requirements.

As described in this policy, ASI will not hire drivers who have not yet had their CDLs reinstated. Therefore, drivers who have violated DOT drug and/or alcohol prohibitions at ASI or elsewhere will not be hired if they have not satisfactorily completed all DOT reinstatement requirements (including any required rehabilitation, medical recertification to drive, and return-to-duty testing).

4. TESTING

In compliance with DOT rules, testing for prohibited substance use is required by ASI in the following situations: pre-employment, post-accident, random selection, and reasonable suspicion. Each of these situations is discussed below:

A. Pre-employment Testing

It is the ASI's policy that applicants for CMV driver positions must pass a DOT pre-employment drug and alcohol test, which will be conducted after an offer is made but prior to being hired for or transferred to the position.

The requirement for DOT pre-employment testing applies to new hires OR existing employees transferring into CMV driver positions. The final results of the tests must be in the department's possession prior to awarding the position to the applicant or transfer candidate. Therefore, sufficient time should be allowed for pre-employment testing. Drug test results are typically verified by the Medical Review Officer (MRO) within five (5) working days but may take a week or longer in some cases.

To facilitate the use of casual, intermittent, or occasional drivers (such as trip-lease drivers and other non-employee drivers) the requirement for pre-employment testing may be waived if the driver has participated in a DOT drug and alcohol testing program elsewhere, and the driver releases to the designated manager the following records to allow for verification of participation in that program.

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Waiver of Pre-employment Drug Test

The pre-employment drug test may be waived if:

- information is provided indicating the individual has participated in a DOT drug testing program within the previous 30 days as provided;
- information reveals either that the individual was drug-tested by that program within the past six (6) months or was not tested but was subject to random drug testing for the previous 12 months; and
- information reveals that no prior employer has records showing the applicant engaged in prohibited drug or alcohol conduct within the previous six (6) months.

Applicants for driver positions will be required to state whether they have failed an alcohol test (at 0.04 or greater), or a drug test, have refused to be tested, or have violated any other DOT drug or alcohol prohibition within the preceding two years. If such violation did occur, applicants are required to sign a written release of these records for review.

It is ASI's policy that employment applicants for CMV driver positions who have previously violated DOT drug and/or alcohol prohibitions will not be hired until they are qualified to drive CMVs. That is, they must have satisfactorily completed all reinstatement and CMV driver qualification requirements.

After receipt of these records, an assessment will be made by a designated substance abuse professional concerning the applicant's compliance with any required assistance or treatment.

B. Post-Accident Testing

Two situations require drug and alcohol testing of each surviving driver of a CMV as soon as practicable after an accident:

- The driver was performing safety-sensitive functions with respect to the vehicle, and there was a loss of human life, or
- The driver was issued a citation for a moving traffic violation arising from the accident

AND

1. There was bodily injury requiring medical attention away from the scene of the accident,

OR

2. There was disabling damage to **any** vehicle involved in the accident requiring towing from the scene.

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The following table notes when a post-accident test is required to be conducted under this policy:

	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES NO	YES NO
ii. Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
iii. Disabling damage to any motor vehicle requiring tow away	YES NO	YES NO

Drivers who are subject to post-accident testing are required to remain readily available for testing for the next **eight (8) hours** for an alcohol test and the next **32 hours** for a drug test unless tested or excused from testing. Except in medical emergencies, failure of the driver to remain available for drug and/or an alcohol testing will be considered a *refusal to submit to testing*.

Until tested for alcohol or excused from testing, employees must abstain from the consumption of alcohol for 8 hours following the accident.

Prior to being allowed to operate a CMV, drivers will be provided with the necessary information and instructions by ASI regarding the procedures to follow regarding where and when to submit to post-accident testing. These procedures will enable the driver to comply with this requirement, whether on the ASI's property, on the highway, or elsewhere.

IMPORTANT NOTE:

Nothing in this document should be construed to require the delay of necessary medical attention for injured people following an accident or to prevent a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to an accident or to obtain necessary emergency medical care.

C. Random Testing

Employees required to have a CDL will be subject to random testing. ASI's DOT random pool is composed only of drivers who are regularly employed.

Individuals in the pool may be randomly selected for drug testing only or for both drug and alcohol testing. When an individual is randomly selected for both drug and alcohol testing, these tests will be administered during a single visit to the collection facility to minimize the number of visits.

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Drivers will be selected for testing through the use of a third party computer-generated random list. All drivers will have an equal chance of being selected on each testing day. The dates for administering these tests will be reasonably spread throughout the year but will not be predictable. No prior notice will be given. Random testing may occur on any work shift on any workday throughout the year. Persons who are tested will be immediately available for re-selection on the next day.

Drivers notified of selection for testing must proceed immediately to the designated testing site. The time allowed between notification and testing is no more than the requisite travel time to the testing site.

A reasonable amount of transportation time will be allowed. If a driver is notified of his or her selection while performing a safety-sensitive function, he or she is required to cease performing the function as soon as it can be safely terminated and proceed to the testing site as soon as possible.

It is ASI's policy that all drivers are considered to be immediately available to perform one or more of the on-duty functions listed in this policy, items (a) through (g), and, therefore, are subject to random drug and alcohol testing while working.

A driver may be notified of selection for random alcohol testing;

- **While the driver is performing safety-sensitive functions;**
- **Just *before* the driver is to perform or is expected to be in readiness to perform safety-sensitive functions; or**
- **Just *after* the driver has ceased performing safety-sensitive functions.**

Random Testing Rate

Initially, the minimum number of random alcohol tests required by DOT to be conducted annually by the industry will be equal to **10 percent** of the average number of drivers actually employed by each motor carrier throughout the year. The minimum number of random drug tests will be equal to **50 percent** of the average number of employed drivers. However, the DOT may adjust the required minimum rate for alcohol testing either up or down based on the violation rate experienced by the nation's federal highway transportation companies.

The DOT announced 2023 random testing rates are:

DOT 2023 Random Testing Rates	
Random <u>Drug</u> Testing Rate	Random <u>Alcohol</u> Testing Rate
50%	10%

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D. Reasonable Suspicion Testing

Drivers are required to submit to drug and/or alcohol testing upon request if supervision or management has reason to believe the driver has violated any of the drug and/or alcohol prohibitions except for suspected possession of alcohol. A reasonable suspicion drug and/or alcohol test will be administered if one or more supervisors or other management officials, who have been trained in behavioral observation, makes a specific, articulable observation concerning a driver's **appearance, behavior, speech, or body odor**. In the case of suspected drug use, the observations may include indications of the **chronic or withdrawal effects of controlled substances**. The drug test should be conducted as soon as possible, but no longer than **32 hours** from the determination. If the drug test was not able to be conducted within 32 hours of the determination, the DER will document the reason why it was not administered and placed on file. Failure of the driver to remain available for drug and/or alcohol testing will be considered a *refusal to submit to testing*.

An attempt will be made to obtain corroboration from a second management official. However, failure to obtain the corroboration of a second management official will not prevent the conduct of a reasonable suspicion test. When testing is required, supervision or management will make necessary arrangements for the testing. To accommodate special circumstances, supervisors are provided instructions during supervisory training on how to arrange the conduct of drug and alcohol tests off-site and on weekends and holidays.

If, for any reason, an alcohol test cannot be conducted within **two (2) hours** following the determinations that reasonable suspicion exists to require testing, a written explanation of the reason for the delay is required to be placed on file by supervision or management. A copy will be sent to the appropriate Manager. A reasonable suspicion alcohol test will not be administered after **eight (8) hours** following the determination, and the reason why it was not administered will be documented and placed on file.

A driver will be requested to undergo reasonable suspicion alcohol testing only:

While the driver is performing safety-sensitive functions;

1. Just *before* the driver is to perform or is expected to be in readiness to perform safety-sensitive functions; or
2. Just *after* the driver has ceased performing safety-sensitive functions.

A written record will be made of the observation leading to a reasonable suspicion drug or alcohol test and signed by the supervisor or other trained ASI official who made the observations within 24 hours of the observed behavior or before the drug test result is released, whichever is earlier.

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Reasonable Suspicion Removal Without an Alcohol Test

If a supervisor has reason to believe a driver has used alcohol, and a reasonable suspicion alcohol test is not administered, the driver will be prevented from performing or continuing to perform safety-sensitive functions until either an alcohol test is administered with a result of less than 0.02, or 24 hours have elapsed.

E. Return-To-Duty Testing

Before an employee returns to duty in a safety-sensitive function after engaging in prohibited conduct under this policy, he or she must undergo a return-to-duty drug and/or alcohol test as specified by a substance abuse professional. Return-to-duty alcohol test results must be below 0.02.

F. Follow-Up Testing

Each employee who has been identified by a substance abuse professional as needing assistance in resolving a substance abuse problem and who has returned to duty requiring the performance of a safety-sensitive function will be subject to unannounced follow-up drug and/or alcohol testing. The number, frequency, and types of these follow-up tests will be as specified by the substance abuse professional. Follow-up tests will not involve advance notice to the individual. At least six (6) tests will be conducted in the first 12 months after the employee is returned to duty. The substance abuse professional will monitor the test results to determine the duration of follow-up testing, which may be up to a maximum of 60 months.

Follow-Up Tests Will Be Conducted:

1. While the employee is performing safety-sensitive functions;
2. Just *before* the employee is to perform or is expected to be in readiness to perform safety-sensitive functions; or
3. Just *after* the employee has ceased performing safety-sensitive functions.

WARNING: All return-to-duty and follow-up tests will be conducted as directly observed collections. These collections will include the requirement to lift shirts/blouses to belly button, lower pants/underpants to mid-thigh, and turn around to demonstrate that the donor has no prosthetic devices.

5. Drugs Tested:

The following controlled substances will be tested at the stated cutoff levels:

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NAME OF DRUG	SCREENING THRESHOLD (Urine)	CONFIRMATION THRESHOLD (Urine)
Amphetamines (Amp)	500 ng/mL	250 ng/mL
Methamphetamine	500 ng/mL	250 ng/mL
MDMA/MDA	500 ng/mL	250 ng/mL
Cocaine metabolite (Benzoylecgonine)	150 ng/mL	100 ng/mL
Marijuana metabolite (THCA)	50 ng/mL	15 ng/mL
Opioids (codeine/morphine)	2000 ng/mL	2000 ng/mL
Hydrocodone	300 ng/mL	100 ng/mL
Hydromorphone	300 ng/mL	100 ng/mL
Oxycodone	100 ng/mL	100 ng/mL
Oxymorphone	100 ng/mL	100 ng/mL
Phencyclidine (PCP)	25 ng/mL	25 ng/mL
6-Acetylmorphone	10 ng/mL	10 ng/mL

As DOT/FMCSA may require from time to time, additional substances will be added automatically to our testing program.

NOTICE – Marijuana Use: The Office of the Secretary of Transportation has issued a statement indicating that, because the possession of marijuana remains a crime (Schedule I drug) under federal law, the authorized use of marijuana under state law for either medical or personal use will not be accepted as a legitimate explanation for a positive test result.

6. COLLECTION OF SAMPLES/LAB ANALYSIS:

A. **Specimen Collection:** All specimen collection for drugs and tests for alcohol will be performed in accordance with those authorized by the Substance Abuse and Mental Health Service Administration (SAMHSA).

B. **Leaving a Test Site:** Leaving a collection facility without proper authorization once the testing process has begun will be considered a **refusal** to test and appropriate discipline to be imposed. An employee may only leave a collection facility upon completion of the test process. Anyone who leaves a test site before completing the test must demonstrate clear evidence of an emergency such as medical, EMS, or police records. ASI will make the final determination if a refusal to test has occurred.

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C. **Specimen Analysis:** Only a laboratory facility certified by the Substance Abuse and Mental Health Service Administration (SAMHSA) will be retained by ASI to perform all sample analysis. The laboratory will be required to maintain strict compliance with federally approved chain-of-custody procedures, quality control, maintenance, and scientific analytical methodologies. Test methods and procedures authorized by the Substance Abuse and Mental Health Service Administration (SAMHSA) will be used.

D. **Dilute Specimens:** Unless otherwise requested by the MRO to conduct a retest, ASI may require an immediate recollection for specimens determined to be Negative-dilute.

7. ALCOHOL TESTING

All alcohol tests will be conducted in strict compliance with the rules adopted by federal DOT.

8. EMPLOYEE ASSISTANCE

Any employee in need of assistance in dealing with a drug or alcohol issue is encouraged to contact the Designated Employer Representative (DER). Local available professional resources will be made available to anyone in need through ASI's Employee Assistance Program (EAP). All inquiries will be treated as confidential, and no disciplinary action will be taken for seeking assistance. Anyone seeking assistance is nonetheless expected to comply with all work rules, including this policy.

9. DISCIPLINE/APPEAL OF RESULTS

A positive test shall be deemed misconduct and may result in termination of employment.

A. **Drugs:** Any employee testing positive for the presence of a prohibited controlled substance may, the first time, require submission to a qualified substance abuse professional and compliance with any recommended counseling or plan of recovery. Any failure to comply with or complete these recommendations will result in immediate termination. Further violation of this policy will be subject to discipline up to and including termination of employment.

B. **Alcohol:** Any employee with a confirmed positive alcohol test may, the first time, require submission to a qualified substance abuse professional and compliance with any recommended counseling or plan of recovery. Any failure to comply with or complete these recommendations will result in immediate termination. Further violation of this policy will be subject to discipline up to and including termination of employment.

As directed by the Secretary of Transportation, the use of marijuana for medical or personal reasons is not a reasonable explanation of a positive test for marijuana and will result in discipline.

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C. Refusal to Test: Any employee who refuses to test or

1. who fails to cooperate in or complete the sample collection procedure, including failure to provide a sufficient specimen without medical justification, or
2. who is found to have adulterated or attempted to adulterate a sample will be terminated.

WARNING: Be Aware that adulterating or attempting to adulterate a sample for workplace drug testing is a crime in some states.

10. REVIEW AND NOTICE OF RIGHTS

ASI's Medical Review Officer will contact any employee testing positive for the presence of a prohibited controlled substance (not alcohol). The employee will be allowed to present medical documentation to explain any permissible use of a drug. All such discussions between the employee and the MRO will be confidential. ASI will not be a party to or have access to matters discussed between the employee and the MRO. Until the employee contacts the MRO or a reasonable time has elapsed after the employee was asked to contact the MRO, ASI will not be advised of the test result.

If legitimate, medically supportable reasons exist to explain the positive result, the MRO will report the test result to ASI as a negative. If there is no legitimate medically supportable reason for the positive test result, the MRO will report the test result as positive. ASI will then notify the employee of the positive result and the substance(s) detected.

If, during the course of an interview with an employee who has tested positive, the MRO learns of a medical condition or use of a legitimately prescribed medication which, in the MRO's reasonable medical judgment, could render the employee unfit to perform any safety-sensitive function, or which could pose a significant safety risk, the MRO must report that information to ASI.

Before reporting any safety concerns and/or medical information to ASI under these circumstances, the MRO will advise the employee that he/she has up to five business days to have their prescribing physician contact the MRO to determine if alternative medication could be recommended that would not render the employee unfit for duty or pose a risk to safety.

If the result is reported to ASI as positive by the MRO, ASI will notify the employee in writing of the following:

1. The result of the test;
2. The employee's right to have the split sample analyzed;
3. The employee's right to choose the laboratory to analyze the split sample;

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4. The employee's right to take up to 3 days after the date of written notice to decide whether to have the split analyzed; and,
5. The employee's responsibility to pay for the split analysis.

Split-sample Analysis: (Not alcohol)

The employee may request that a confirmation test on a specimen found positive for drugs (not alcohol) be conducted. The analysis of the split sample (sample "B") shall be obtained from a separate, unrelated certified laboratory chosen by the employee and shall be at the employee's expense.

The request by the employee must be made within 72 hours. The employee shall notify the Designated Employer Representative (DER) or call (952) 447- 6025 and ask for Tom Stockert.

No medical review of an alcohol positive will occur.

NO MEDICAL EXPLANATION FOR ALCOHOL IN YOUR SYSTEM WILL BE ACCEPTED

11. CLEARINGHOUSE

ASI, and/or our Service Agents (such as TPAs, MROs, or SAPs) where applicable, must report to the *Commercial Driver's License Drug and Alcohol Clearinghouse* (Clearinghouse) information about:

1. A verified positive, adulterated, or substituted drug test result;
2. An alcohol confirmation test with a concentration of 0.04 or higher;
3. A refusal to submit to any test required by this policy;
4. An employer's report of actual knowledge of the following:
 - a. On duty alcohol use;
 - b. Alcohol use within eight hours of reporting for duty;
 - c. Alcohol use for eight hours after an accident or until tested;
 - d. Reporting to duty after using a non-prescribed controlled substance;
5. A substance abuse professional (SAP) report of the successful completion of the return-to-duty process;
6. A negative return-to-duty test; and

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7. An employer's report of completion of follow-up testing.

Additionally, ASI must query the Clearinghouse for information during the pre-employment process for prospective employees and at least once per year for **each** current employee to determine whether anyone has incurred a drug or alcohol violation with a different employer, making them ineligible to operate a CMV. Employee consent is required prior to each inquiry. Information in the Clearinghouse will remain for **five years** or until an individual has completed the return-to-duty process, whichever is later.

Employees will be informed via US Mail¹ by FMCSA when information concerning them has been added to, revised, or removed from the Clearinghouse. The employee will be informed how to access their information in the Clearinghouse.

Employees/drivers must register with the Clearinghouse to monitor their information. For assistance, contact ASI's drug program coordinator (the DER). Failure to cooperate with the inquiry authorization or any negative information found during a Clearinghouse inquiry may result in discipline up to and including termination.

12. EMPLOYEE EDUCATION

ASI will establish an awareness program to inform all employees of the dangers of drug and alcohol use in the workplace and to advise each employee of the available employee assistance referral information.

13. SUPERVISORY TRAINING:

ASI will require supervisory personnel of ASI involved with drug or alcohol testing under this policy to attend training classes, which shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file maintained by ASI.

14. CONFIDENTIALITY:

All communications received by ASI relevant to employee or prospective employee drug or alcohol test results, or otherwise received through ASI's drug or alcohol testing program, are confidential communications and shall not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except as otherwise provided or authorized by this policy.

¹ Mail will be sent to the employee's address on record with the State agency that issued the employee's commercial driver's license. Employees may provide alternative means for notification such as email or other address.

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APPENDIX "A"
(Part 1 - FMCSA)

DEFINITIONS:

[Note: Some definitions do not appear in the policy but are part of the test procedures]

Federal Motor Carrier Safety Administration

§382.107 Definitions.

Words or phrases used in this part are defined in §§386.2 and 390.5 of this subchapter, and §40.3 of this title, except as provided in this section—

Actual knowledge for the purpose of subpart B of this part, means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in §382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under §382.307.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol use means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Commerce means:

1. Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and
2. Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) means the FMCSA database that subpart G of this part requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle.

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1. Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
2. Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or
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 (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug, and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this part.

Controlled substances mean those substances identified in §40.85 of this title.

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of ASI. Service agents cannot serve as DERs.

Disabling damage means 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.** Damage to motor vehicles that could have been driven but would have been further damaged if so driven.
2. **Exclusions:**
 - i. Damage which 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.

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iii. Headlight or taillight damage.

iv. Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 655), in accordance with part 40 of this title.

Driver means any person who operates a commercial motor vehicle. This includes but is not limited to: Full time regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

Employer means a person or entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this part. The term, as used in this part, means the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not employers for the purposes of this part.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Negative return-to-duty test result means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02, as described in §40.305 of this title.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

Refuse to submit (to an alcohol or controlled substances test) means that a driver:

1. Fail to appear for any test (except a pre-employment 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. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a) of this title);
2. Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see §40.63(c) of this title) a pre-employment test is not deemed to have refused to test;

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3. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c) of this title) for a pre-employment test is not deemed to have refused to test;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen (see §§40.67(l) and 40.69(g) of this title);
5. Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2) of this title);
6. Fail or declines to take a second test the employer or collector has directed the driver to take;
7. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d) of this title. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
8. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process);
or
9. Is reported by the MRO as having a verified adulterated or substituted test result.

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

1. All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched unless the driver has been relieved from duty by the employer;
2. All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter 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 (a berth conforming to the requirements of §393.76 of this subchapter);
5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

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Screening test (or initial test) means:

1. In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.
2. In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test before the MRO has completed verification of the test results.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

[66 FR 43103, Aug. 17, 2001, as amended at 68 FR 75458, Dec. 31, 2003; 77 FR 59825, Oct. 1, 2012; 81 FR 87724, Dec. 5, 2016]

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**APPENDIX “B”
(Part 2 - OST)**

Office of the Secretary of Transportation (49 CFR Part 40)

§ 40.3 What do the terms used in this part mean?

In this part, the terms listed in this section have the following meanings:

Adulterated specimen. A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other, or a third-party controls or has the power to control both. Indicators of control include but are not limited to: interlocking management or ownership; shared interest among family members; shared facilities or equipment; or common use of employees. Following the issuance of a public interest exclusion, an organization having the same or similar management, ownership, or principal employees as the service agent concerning whom a public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of Subpart R of this part.

Air blank. In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.

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

Alcohol concentration. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

Alcohol confirmation test. A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

Alcohol screening device (ASD). A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on ODAPC's web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA.

Alcohol screening test. An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Alcohol testing site. A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

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

Aliquot. A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

Breath Alcohol Technician (BAT). A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

Cancelled test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires being canceled. A canceled test is neither a positive nor a negative test.

Chain of custody. The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF) as approved by the Office of Management and Budget.

Collection container. A container into which the employee urinates to provide the specimen for a drug test.

Collection site. A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.

Collector. A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.

Confirmatory drug test. A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmatory validity test. A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Confirmed drug test. A confirmation test result received by an MRO from a laboratory.

Consortium/Third-party administrator (C/TPA). A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug, and alcohol testing programs of its members. C/TPAs are not "employers" for purposes of this part.

Continuing education. Training for substance abuse professionals (SAPs) who have completed qualification training and are performing SAP functions, designed to keep SAPs current on changes and developments in the DOT drug and alcohol testing program.

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Designated employer representative (DER). An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part.

Service agents cannot act as DERs.

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

DOT, The Department, DOT agency. These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of this part, the United States Coast Guard (USCG) in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes only since the USCG regulation does not incorporate Part 40 for its alcohol testing program. These terms include any designee of a DOT agency.

Drugs. The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids.

Employee. Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under this part, the term employee has the same meaning as the term "donor" as found on CCF and related guidance materials produced by the Department of Health and Human Services.

Employer. A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.

Error Correction Training. Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correction training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.

Evidential Breath Testing Device (EBT). A device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

HHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

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Initial drug test (also known as a Screening drug test). The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial specimen validity test. The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

Invalid drug test. The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory. Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD). The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation. For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established. 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.

Negative result. The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug, or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Non-negative specimen. A urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.

Office of Drug and Alcohol Policy and Compliance (ODAPC). The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.

Oxidizing adulterant. A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites or affects the reagents in either the initial or confirmatory drug test.

Positive result. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

Primary specimen. In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

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Qualification Training. The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

Reconfirmed. The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Refresher Training. The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

Rejected for testing. The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

Screening Drug Test. See Initial drug test definition above.

Screening Test Technician (STT). A person who instructs and assists employees in the alcohol testing process and operates an ASD.

Secretary. The Secretary of Transportation or the Secretary's designee.

Service agent. Any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

Shipping container. A container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.

Specimen bottle. The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold the urine specimen during transportation to the laboratory.

Split specimen. In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

Split specimen collection. A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

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Stand-down. The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

Substance Abuse Professional (SAP). A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Substituted specimen. A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Verified test. A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

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