

CDL (FHWA)



**DRUG TESTING UNDER
RULES OF THE
FEDERAL HIGHWAY
ADMINISTRATION FOR
OPERATION OF
CERTAIN
COMMERCIAL MOTOR
VEHICLES, DATED
MARCH 24, 1995**

"SAMPLE"

ADDENDUM

**DRUG TESTING UNDER RULES OF THE
FEDERAL HIGHWAY ADMINISTRATION FOR
OPERATION OF CERTAIN COMMERCIAL
MOTOR VEHICLES, DATED MARCH 24, 1995.**

**I HEREBY ACKNOWLEDGE RECEIPT OF DRUG AND
ALCOHOL TESTING INFORMATION TITLED: ADDENDUM
Drug Testing Under Rules of the Federal Highway Administration
for Operation of Certain Commercial Motor Vehicles, dated
March 24, 1995.**

Name

Date

"SAMPLE"

**YOUR ORIGINAL SIGNED COPY IS IN YOUR PERSONNEL FILE
IN HUMAN RESOURCES**


CITY OF GAINESVILLE

Inter-Office Memorandum

*Human Resources Department
Box 20*

TO: Department/Division Heads

DATE: May 30, 1995

FROM: Tom Motes 
Human Resources Director

SUBJECT: ADDENDUM - Drug Testing Under Rules of the Federal
Highway Administration for Operators of Certain Commercial
Motor Vehicles

Enclosed is the final version of the ADDENDUM - Drug Testing Under Rules of the Federal Highway Administration for Operators of Certain Commercial Motor Vehicles. This document has been ratified by the CWA and the City Commission. Please replace the previous copy sent you with this copy.

Enclosure

ADDENDUM

Drug Testing Under Rules of the Federal Highway Administration For Operators of Certain Commercial Motor Vehicles

I. Introduction

- A. The CITY is required under Federal Law to implement a drug and alcohol testing policy for certain commercial motor vehicle drivers. Drivers of commercial motor vehicles covered under this Addendum include:
- (1) Operators of commercial motor vehicles with a declared gross vehicle weight of 26,001 or more pounds, except RTS Bus (See 49 CFR Part 653) operators; or
 - (2) Operators of commercial motor vehicles having declared gross vehicle weight of less than 26,000 pounds and who transport hazardous waste, hazardous substances, flammable cryogenic liquid, or hazardous materials and which vehicles are required to be placarded per 49 CFR part 172, subpart F.
 - (3) Operators of a commercial motor vehicle designed to transport 16 or more passengers, including the driver, except RTS Bus (See 49 CFR Part 653).
- B. Drivers who are covered under this Addendum are subject to the following rules in addition to the CITY's drug-free workplace policy. Employees and positions covered under this Addendum are described on a list on file in the Human Resources Department.
- C. Definitions:
- (1) Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
 - (2) Alcohol Use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
 - (3) Commercial Motor Vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle -
 - (a) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

- (b) Has a gross vehicle weight rating of 26,001 or more pounds; or
 - (c) Is designed to transport 16 or more passengers, including the driver; or
 - (d) Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
- (4) Driver: Means any employee of the CITY who operates a covered commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; or casual, intermittent or occasional drivers. Driver applicant means any person applying for a position which would require the ability to drive a covered commercial motor vehicle, including employees of the CITY seeking promotion or transfer to such a position.
- (5) Accident:
- (a) Except as provided in paragraph (b) of this subsection, the term "accident" means an occurrence involving a commercial motor vehicle resulting in:
 - (i) A fatality;
 - (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.
 - (b) The term "accident" does not include:
 - (i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or
 - (ii) An occurrence involving only the loading or unloading of cargo.

- (6) 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.
- (i) Inclusions. Damages to motor vehicles that could have been driven, but would have been further damaged if so driven.
 - (ii) Exclusions.
 - (a) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
 - (b) Tire disablement without other damage even if no spare tire is available.
 - (c) Headlamp or taillight damage.
 - (d) Damage to turn signals, horn, or windshield wipers which makes them inoperative.
- (7) Drug or Alcohol test: Means a program that utilizes the procedures and protocols described in 49 CFR Part 40 to determine the existence of alcohol, marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP) in urine and breath specimens.
- (8) Drugs/Controlled Substances: Means marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP) and their metabolites.
- (9) 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.
- (10) Refuse to submit (to an alcohol or controlled substances test) means that a driver/driver applicant:
- (a) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this addendum;
 - (b) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received

notice of the requirement for urine testing in accordance with the provisions of this addendum; or

- (c) engages in conduct that clearly obstructs the testing process.
 - (d) refusal to execute the consent or release to testing form(s) constitutes a refusal to submit per 49 CFR 40.25 section (f) (22) (ii).
- (11) On Duty 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.
- (12) Safety-Sensitive function means any of those on-duty functions set forth in 49 CFR § 395.2 - On-Duty time as follows:
- (a) All times at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
 - (b) All time inspecting equipment as described in 49 CFR § 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time: For example:
 - (i) inspecting the following equipment:
 - service brakes, including trailer brake connections
 - parking (hand) brakes
 - steering mechanism
 - lighting devices and reflectors
 - tires
 - horns
 - windshield wipers
 - rear vision mirrors
 - coupling devices
 - fire extinguisher
 - spare fuses
 - warning devices for stopped vehicles, or
 - (c) All driving time which means all time spent at the driving controls of a commercial motor vehicle in operation;
 - (d) All time, other than driving time, in or upon any commercial motor vehicle;

- (e) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
 - (f) All time spent performing the driver requirements of §§ 392.40 and 392.41 (stopping at scene) of 49 CFR relating to accidents;
 - (g) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- (13) Substance Abuse Professional means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

II. PROHIBITIONS AND CONSEQUENCES

A. Drug Use Prohibitions

1. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver:
 - a. Uses any controlled substances; or
 - b. Tests positive for use of a drug; or
 - c. Refuses to be tested for use of drugs.
2. No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:
 - a. Any Schedule 1 controlled substance;
 - b. An amphetamine or any formulation thereof (including, but not limited, to "pep pills," and "bennies";
 - c. A narcotic drug or any derivative thereof; or
 - d. Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

3. Paragraphs (1)(a)(b) and (2)(b)(c) and (d) above do not apply to the possession or use of a substance administered to a driver by or under the instructions of a physician who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle.

B. Alcohol Prohibitions

- (a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
- (b) No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol.
- (c) No driver shall use alcohol while on duty.
- (d) No driver shall perform safety-sensitive functions within four hours after using alcohol.
- (e) No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

C. Refuse to Submit

No driver shall refuse to submit to a post-accident alcohol or controlled substance test required under this Addendum, a random alcohol or controlled substances test required under this Addendum, a reasonable suspicion alcohol or controlled substances test required under this Addendum, or a follow-up alcohol or controlled substances test required under this Addendum.

D. Consequences

Any driver/employee or driver applicant who is presently employed by the City who violates any of the provisions of Subsections A through C of this Section or whose positive test for alcohol is at a result of 0.04 or greater or who otherwise violates the provisions of this Addendum will be removed immediately from safety sensitive functions and is subject to disciplinary action up to and including dismissal. Each driver and each driver applicant already employed by the City who engages in conduct prohibited by Section II A-C or who tests positive for alcohol at 0.04 or greater shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. Except as provided below, dismissals for a first offense will be considered an appropriate penalty absent mitigating circumstances. Driver applicants who are not

already employed by the City will not be hired if they test positive for controlled substances or have any measured alcohol concentration or any detected presence of alcohol. In the event a driver submits to a random alcohol or controlled substances test, which tests positive (in the case of alcohol a concentration greater than 0.04) the driver may be allowed a one-time opportunity to participate in an alcohol/drug rehabilitation program in accordance with the procedures described in 49 CFR 382.605, copy attached (which may include the City's EAP) approved by the City in lieu of being immediately dismissed based upon such test result. However, allowing the driver to participate in such program in lieu of being dismissed is conditioned upon the driver meeting the requirements set forth in paragraph XD of the City's Drug Free Workplace Program. Furthermore, such an opportunity will not be available to an employee who has previously participated in an alcohol/drug rehabilitation program as an alternative to dismissal. Drivers allowed the rehabilitation opportunity described herein may still receive disciplinary action short of dismissal in addition to required participation in the rehabilitation program. Participation in the treatment program, be it entirely voluntary, or pursuant to this subsection will not excuse additional violations of this Addendum, the City's Drug Free Workplace Program, work rules violations, improper conduct, or poor performance and the driver employee may be disciplined or dismissed for such offenses or failure to perform. Drivers who test positive for alcohol with a concentration of 0.02 or greater but less than 0.04 shall be immediately removed from performance of safety sensitive functions for the remainder of their shift and that of the entire next scheduled shift if the next scheduled shift would begin in less than twenty four (24) hours after the test. If the driver is suspended, vacation or sick leave may be used in lieu of being in a no pay status. Use of vacation with respect to this section {II (D)} will be granted on a one time basis; up to a maximum of two (2) shifts. The driver may be subject to additional disciplinary action. In the event that the City requires the employee's presence at the collection site outside normal working hours as part of the testing process and the employee passes the drug/alcohol test, such required time outside after normal working hours shall be considered actual time worked for the purpose of Section 13.4 of the CWA labor agreement, if applicable.

III. TESTS REQUIRED

A. Pre-employment Testing

1. All driver applicants the CITY intends to employ must be tested for the use of alcohol and controlled substances.

B. Postaccident Testing

1. All drivers who were performing safety sensitive functions at the time of an accident involving loss of human life or who are involved in an accident and who receive a citation for a moving traffic violation arising from the accident shall submit to breath alcohol test within two (2) hours following the accident but no longer than eight (8) hours following the accident and shall provide a urine

sample to be tested for the presence of controlled substances as soon as possible, but no later than 32 hours, after such accident.

2. All drivers involved in an accident shall inform their management representative or other appropriate CITY official as soon as possible following such accident unless medically unable to do so. A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the City to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention of injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. Through this addendum the CITY is providing drivers with necessary information and procedures regarding their obligation to provide specimens under this section.
3. The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to applicable Federal, State, or local requirements, and that the result of the tests are obtained by the City.

C. Random Testing

1. (a) Except as provided in paragraph 2 of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of driver positions.
(b) The minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.
2. Any new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication of such in the Federal Register by the FHWA.
3. The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as random number table of a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.
4. Random alcohol and controlled substances tests conducted under this Addendum shall be unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

5. Each driver who is notified of selection for random alcohol and/or controlled substances testing shall make himself available at the test site immediately; provided, however, that if the driver is performing a safety-sensitive function at the time of notification, the driver shall cease to perform the safety-sensitive function and make himself available at the testing site as soon as possible.
6. A driver shall only be randomly tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

D. Reasonable Suspicion Testing

1. A driver is required to submit to an alcohol test when the City has reasonable suspicion to believe that the driver has violated the prohibitions of Section II concerning alcohol, except in the case of mere possession. The City's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
2. A driver is required to submit to a controlled substances test when the City has reasonable suspicion to believe that the driver has violated the prohibitions of Section II concerning controlled substances. The City's determination that reasonable suspicion exists to require the driver to undergo a controlled substances tests must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances. For a more detailed description of observations and indicators, see Section VII B2 of the City's Drug Free Workplace Program.
3. The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or management official who is appropriately trained. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.
4. Alcohol testing is authorized by this section only if the observations required by paragraph 1 of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this Addendum. A driver may be directed by the City to only undergo reasonable suspicion alcohol testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.
5. Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the

performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall the driver perform or continue to perform safety-sensitive functions, until:

- (a) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or
 - (b) Twenty-four hours have elapsed following the determination under paragraph 1 of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions of this Addendum concerning the use of alcohol.
6. A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisory management official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

E. Return to Duty and Follow-up Testing

- 1. Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by Section II of this Addendum concerning alcohol, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
- 2. Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart II of this Addendum concerning controlled substances, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances.
- 3. In the event that a driver is allowed to return to duty/work after engaging in conduct prohibited by Section II of this Addendum and has been determined to be in need of assistance in resolving problems associated with alcohol misuse and/or the use of controlled substances, the driver will be subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional consisting of at least six tests in the first twelve months following the driver's return to duty/work, but shall not exceed sixty months from the date of the driver's return to duty/work. Follow-up alcohol testing conducted pursuant to this addendum shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

IV. TESTING PROCEDURES

Testing procedures for alcohol and drug tests required by this Addendum shall be in conformance with 49 CFR Part 40, a copy of which is attached hereto, except as modified by this Addendum. A summary of 49 CFR Part 40, prepared by J.J. Keller and Associates is available for review (but not copying since this is copyrighted material) at the Human Resources Department. The list of the drivers/classifications covered by this addendum is attached hereto and on file at the Human Resources Department. The Human Resources Director is the city official designated to answer questions about the testing procedures as well as any other matter covered in this addendum.

V. HANDLING OF TEST RESULTS, AND CONFIDENTIALITY

A. Handling of test results and confidentiality shall be in conformance with 49 CFR Part 40 except as modified below.

- (1) Except as required by law or expressly authorized or required in this section, the City shall not release driver information that is contained in records required to be maintained under 49 CFR §382.401.
- (2) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The City shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.
- (3) The City shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee's consent.
- (4) Records shall be made available to a subsequent employer upon receipt of a written request from a driver.
- (5) The City may disclose information required to be maintained under 49 CFR 382 pertaining to a driver and driver applicant, the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of such individuals, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the driver engaged in conduct prohibited by Section II of this addendum (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.)

- (6) The City shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.
- (7) The City shall make available copies of all results for City alcohol and/or controlled substances testing conducted under this addendum and any other information pertaining to this alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.
- (8) When requested by the National Transportation Safety Board as part of an accident investigation, City shall disclose information related to its' administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

B. Controlled Substances - Medical Review Officer Notifications to the City, Notification by the City to Driver Applicant/Driver

- (1) The medical review officer may report to the City using any communications device, but in all instances a signed, written notification must be forwarded to the City within three business days of completion of the medical review officer's review, pursuant to 49 CFR 40. Such report to the City shall clearly state:
 - (A) That the controlled substances test being reported was in accordance with 49 CFR 40 and 382.
 - (B) The name of the individual for whom the test results are being reported;
 - (C) The type of test indicated on the custody and control form (i.e. random, post-accident, etc.);
 - (D) The date and location of the test collection;
 - (E) The identities of the persons or entities performing the collection, analysis of the specimens and serving as the medical review officer for the specific test;
 - (F) The verified results of a controlled substances test, either positive or negative, and if positive, the identity of the controlled substance(s) for which the test was verified positive.
- (2) A designated management official shall make reasonable efforts to contact and request each driver/driver applicant who submitted a specimen under the

employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver. See also 49 CFR 40.33.

- (3) A designated management official shall immediately notify the medical review officer that the driver/driver applicant has been notified to contact the medical review officer within 24 hours. See also 49 CFR 40.33.
- (4) A medical review officer shall report to the City that the medical review officer has made all reasonable efforts to contact the driver/driver applicant as provided in 49 CFR §40.33(c). The City shall, as soon as practicable, request that the driver/driver applicant contact the medical review officer prior to dispatching the driver or within 24 hours, whichever is earlier. See subsection (2) above and 49 CFR 40.33.
- (5) The City shall notify a driver/applicant of the results of a pre-employment controlled substance test conducted under this part, if the driver/applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The City shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The City shall also inform the individual which controlled substance or substances were verified as positive.

C. Medical Review Officer Record of Retention for Controlled Substances

- (1) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.
- (2) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and cancelled controlled substances test results.
- (3) No person may obtain the individual controlled substances test results retained by a medical review officer, and no medical review officer shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver/driver applicant. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the City or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in B(1) of this section.

D. Notification of Alcohol Test Results

In accordance with the provisions of 49 CFR Part 40, the results of both the screening and confirmation of breath alcohol test are displayed to the individual being tested immediately after the tests. The breath alcohol technician transmits the results to the City in a confidential manner, in writing, in person, or by telephone or electronic means. For more information, see 49 CFR Part 40, subpart (c).

VI. ALCOHOL AND DRUG EFFECTS, SYMPTOMS, AND INTERVENTION METHODS

1. Symptoms and Effects of Alcohol

Alcohol or drug problems usually manifest themselves in an employee's work performance, behavior, and appearance. Some of the warning signs of any substance abuse are:

- Excessive absenteeism (especially after weekends and holidays)
- Frequent need to borrow money
- Avoidance of supervisors
- Lack of concentration or decreased productivity after lunch or breaks
- Unsatisfactory work performance
- Drastic weight changes
- Bloodshot eyes, runny nose
- Deterioration in personal grooming and hygiene
- Agitation, rapid or slurred speech, dilated pupils
- Pattern of accidents
- Wearing of sunglasses and long-sleeved shirts at inappropriate times

a. Effects of Alcohol Use:

The chronic use of alcohol [three servings per day of beer (12 ounces), whiskey (1 ounce) or wine (6 ounces)] may result in the following:

(i) Effects on Health:

- Dependency
- Kidney disease
- Ulcers
- Fatal liver diseases
- Alcohol Related Birth Defects
- Inflammation of the heart muscle
- Permanent brain damage

(ii) Effects on Work:

- Slows down physical responses

Progressively impairs mental functions
Slowed reaction times
More than 6 times more likely to have an accident
Confusion
Loss of memory, judgment and learning ability
Permanent brain damage

(iii) Effects on Personal Life:

Separation and divorce rate is 7 times the average
Two-thirds of all Americans will be involved in an alcohol-related vehicle accident
15 times more likely to commit suicide
Permanent brain damage

b. Signs and Symptoms of Alcohol Use

Odor of alcohol on breath
Lack of coordination
Slurred speech
Sleepy or stuporous condition.
Dulled mental process
(except for odor, these are sign and symptoms of any depressant substance)

2. Symptoms and Effects of Drug Abuse

a. Effects of Drug Abuse on Work, Health, and Personal Life

(i) Marijuana

Irritation to the lungs
Cancer
Delayed decision making
Impaired short-term memory
Impaired signal detection (risk for users operating machinery)
Long-term effect on performance

(ii) Cocaine

Strong psychological dependency
Strokes and heart attacks
Death
Paranoia and withdrawal causing unpredictable and violent behavior

(iii) Opiates

High risk for contracting hepatitis and AIDS due to sharing needles
Increased pain tolerance - failure to seek medical attention

Higher risk for accident caused by mental clouding and drowsiness
Financial problems

(iv) Amphetamines

Hearth and brain damage

Hearth attack and stroke

Withdrawal may cause severe physical and mental depression

Toxic psychosis - resembles schizophrenia

(v) Phencyclidine (PCP)

Irreversible memory loss

Personalty changes

Thought disorders

Death

Suicidal tendencies and mental dysfunction

Acute toxicity - possibly causing combativeness, catatonia,
convulsions and coma

b. Signs and Symptoms of Drug Abuse

(i) Marijuana

Reddened eyes

Distinctive odor on clothing

Chronic fatigue and lack of motivation

Chronic sore throat

(ii) Cocaine

Financial problems

Runny or irritated nose

Difficulty in concentration

Secretive behaviors, frequent non-business visitors, delivered
packages, phone calls

Wide mood swings - unusual defensiveness, anxiety, agitation

Insomnia

Talkativeness

Forgetfulness, absenteeism, tardiness and missed assignments

(iii) Opiates

Mood changes

Nausea, vomiting, and constipation

Impaired mental functioning and alertness

Depression

Fatigue

(iv) Amphetamines
Increased heart rate and pupils
Confusion, panic
Inability to concentrate
Profuse sweating

(v) Phencyclidine (PCP)
Extreme mood shift
Muscle rigidity
Jerky eye movements
Confusion and agitation
Dizziness

3. Intervention Methods

- (a) Employees may be referred by management or employees may personally seek assistance for help in combatting alcohol and/or controlled substance abuse from the City's EAP or other community resources. The name of the City's EAP can be obtained from Employee Health Services. Information about a self-referred employee's contact with the EAP is confidential and will not be disseminated without the employee's permission. See Article X of the City's Drug Free Workplace Program and Personnel Policy No. 21 for additional information regarding the City's EAP.
- (b) Participation in an employee assistance program or a drug rehabilitation program or other community assistance program shall be paid for to the extent authorized under the City's Health Insurance Program, whether the particular program is selected by the employee or the City. Information regarding the City's Health Insurance Program can be obtained from the Risk Management.
- (c) The following is a list of drug and alcohol treatment programs within the Alachua and Marion County areas. The City does not recommend or endorse any of the programs. This list is provided for information only.

Alachua and Marion County Drug and Alcohol Treatment Programs
and Employee Assistance Programs

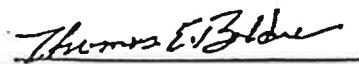
<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>
Charter Springs Hospital, Inc. 371-2335 Charter Counseling Center/Gainesville	2631 N.W. 41st Street Suite E-5, Foxbridge III Gainesville, Florida 32606	(904)
Corner Drug Store of Gainesville (CDS), Inc.	1300 N.W. 6th Street Gainesville, Florida 32601	(904) 378-1588
Mental Health Services, Inc. of North Florida	4300 S.W. 13th Street Gainesville, Florida 32608	(904) 374-5600
Sid Martin Bridge House	4400 S.W. 13th Street Gainesville, Florida 32608	(904) 374-5615 1-800-330-5616
Alachua Associates 335-4004	3601 S.W. 2nd Avenue, Suite V Gainesville, Florida 32607	(904) 1-800-329-0440
Vista Pavilion	8900 N.W. 39th Avenue Gainesville, Florida 32606	(904) 338-0097
City of Gainesville Employee (904) 375-1414 Assistance Program (For City employees and covered family)	4140 NW 27th Lane, Suite A Gainesville, Florida 32606	
Charter Springs Hospital, Inc. 237-7293	3130 S.W. 27th Avenue Ocala, Florida 32674	(904)
Fountain Center of Ocala Forest, Inc.	25011 N.E. County Highway 314 Salt Springs, Florida 32134	(904) 685-1010 1-800-762-3707
Marion-Citrus Mental Health Centers, Inc. 629-8893	717 S.W. Martin Luther King Jr. Avenue Ocala, Florida 32674	(904)

IN WITNESS WHEREOF, the parties hereunto set their hands this 28TH day of April 1995.

THE CITY OF GAINESVILLE
FLORIDA

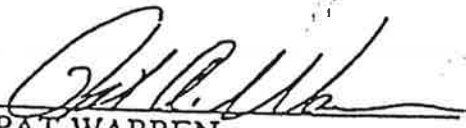

KAREN JOHNSON
INTERIM CITY MANAGER

COMMUNICATIONS WORKERS OF
AMERICA, INC., LOCAL NO. 3170

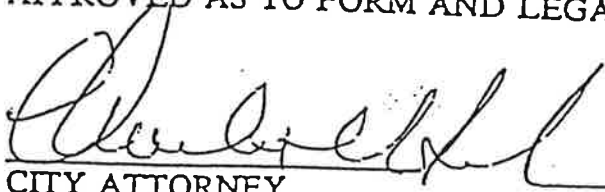

THOMAS E. BOLDUC
PRESIDENT

March 24, 1995
h:\u1c1drugfree.prq


MICHAEL L. KURTZ
GENERAL MANAGER FOR UTILITIES


PAT WARREN
INTERNATIONAL REPRESENTATIVE

APPROVED AS TO FORM AND LEGALITY:


CITY ATTORNEY

CITY COMMITTEE

Tom Motes
Fred Hancock
Darrell Dubose
Sam Evins
Charlie Hauck

UNION COMMITTEE

Tom Bolduc
Pat Warren
David Welch

PART 382--CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

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Authority: 49 U.S.C. 31133, 31136, 31301 et seq., 31502; and 49 CFR 1.48.

Editor's Note: Technical amendments to Part 382 were published in the Federal Register on July 17, 1996. This page has been revised to incorporate these changes. Date modified: July 24, 1996

Subpart A--General

Sec. 382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

Sec. 382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

- (1) The commercial driver's license requirements of part 383 of this subchapter;
- (2) The Licencia Federal de Conductor (Mexico) requirements; or
- (3) The commercial driver's license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

(c) The exceptions contained in Sec. 390.3(g) of this

subchapter do not apply to this part. The employers and drivers identified in Sec. 390.3(g) must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) Exceptions. This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of parts 653 and 654 of this title (Federal Transit Administration alcohol and controlled substances testing regulations); or

(2) Who a State must waive from the requirements of part 383 of this subchapter. These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel;

(3) Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter. These individuals may be:

(i) Operators of a farm vehicle which is:

(A) Controlled and operated by a farmer;

(B) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(C) Not used in the operations of a common or contract motor carrier; and

(D) Used within 241 kilometers (150 miles) of the farmer's farm.

(ii) Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.

Sec. 382.105 Testing procedures.

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

Sec. 382.107 Definitions.

Words or phrases used in this part are defined in Secs. 386.2 and 390.5 of this subchapter, and Sec. 40.3 of this title, except as provided herein--

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 consumption of any beverage, 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 motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle--

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

(2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); 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 and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation test for alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Consortium means an entity, including a group or association of employers or contractors, that provides alcohol or controlled substances testing as required by this part, or other DOT alcohol or controlled substances testing rules, and that acts on behalf of the employers.

Controlled substances mean those substances identified in Sec. 40.21(a) of this title.

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.

(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, 653 and 654), 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 who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

Employer means any person (including the United States, a State, District of Columbia, tribal government, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers and representatives.

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.

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 means the number of positive results for random controlled substances tests conducted under this part plus the number of refusals of random controlled substances tests required by this part, divided by the total of random controlled substances tests conducted under this part plus the number of refusals of random tests required by this part.

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

(1) Fails to provide adequate breath for alcohol testing as required by part 40 of this title, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part,

(2) Fails to provide an adequate urine sample for controlled substances testing as required by part 40 of this title, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or

(3) Engages in conduct that clearly obstructs the testing process.

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 Secs. 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 Sec. 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.

Screening test (also known as initial test) In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

Violation rate means the number of drivers (as reported under Sec. 382.305 of this part) found during random tests given under this part to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this part, divided by the total reported number of drivers in the industry given random alcohol tests under this part plus the total reported number of drivers in the industry who refuse a random test required by this part.

Sec. 382.109 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

- (1) Compliance with both the State or local requirement and this part is not possible; or
- (2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

Sec. 382.111 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights

of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

Sec. 382.113 Requirement for notice.

Before performing an alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

Sec. 382.115 Starting date for testing programs.

(a) Large domestic employers. Each employer with fifty or more drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1995.

(b) Small domestic employers. Each employer with less than fifty drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1996.

(c) All domestic employers. Each domestic employer that begins commercial motor vehicle operations after March 17, 1994, but before January 1, 1996, will implement the requirements of this part beginning on January 1, 1996. However, such an employer may be subject to the requirements of part 391, subpart H on the date they begin operations, if operating commercial motor vehicles in interstate commerce. A domestic employer that begins commercial motor vehicle operations on or after January 1, 1996, will implement the requirements of this part on the date the employer begins such operations.

(d) Large foreign employers. Each foreign-domiciled employer with fifty or more drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1996.

(e) Small foreign employers. Each foreign-domiciled employer with less than fifty drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1997.

(f) All foreign employers. Each foreign-domiciled employer that begins commercial motor vehicle operations in the United States after December 17, 1995, but before July 1, 1997, must implement the requirements of this part beginning on July 1, 1997. A foreign employer that begins commercial motor vehicle operations in the United States on or after July 1, 1997, must implement the requirements of this part on the date the foreign employer begins such operations.

Subpart B--Prohibitions

Sec. 382.201 Alcohol concentration.

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

Sec. 382.205 On-duty use.

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

Sec. 382.207 Pre-duty use.

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

Sec. 382.209 Use following an accident.

No driver required to take a post-accident alcohol test under Sec. 382.303 of this part shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

Sec. 382.211 Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under Sec. 382.303, a random alcohol or controlled substances test required under Sec. 382.305, a reasonable suspicion alcohol or controlled substances test required under Sec. 382.307, or a follow-up alcohol or controlled substances test required under Sec. 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

Sec. 382.213 Controlled substances use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in Sec. 382.107 of this part, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

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

(c) An employer may require a driver to inform the employer of any therapeutic drug use.

Sec. 382.215 Controlled substances testing.

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances. No employer having actual knowledge that a driver has tested positive for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

Subpart C--Tests Required

Sec. 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for alcohol and controlled substances as a condition prior to being used, unless the employer uses the exception in paragraphs (c) and (d) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04, and has received a controlled substances test result from the MRO indicating a verified negative test result. If a pre-employment alcohol test result under this section indicates an alcohol content of 0.02 or greater but less than 0.04, the provision of Sec. 382.505 shall apply.

(b) Exception for pre-employment alcohol testing. An employer is not required to administer an alcohol test required by paragraph (a) of this section if:

- (1) The driver has undergone an alcohol test required by this section or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and
- (2) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the alcohol misuse rule of another DOT agency within the previous six months.

(c) Exception for pre-employment controlled substances testing. An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

- (1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and
- (2) While participating in that program, either
 - (i) Was tested for controlled substances within the past 6 months (from the date of application with the employer) or
 - (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and
- (3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

(d) (1) An employer who exercises the exception in either paragraph (b) or (c) of this section shall contact the alcohol and/or controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

- (i) Name(s) and address(es) of the program(s).
- (ii) Verification that the driver participates or participated in the program(s).
- (iii) Verification that the program(s) conforms to part 40 of this

title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for alcohol or controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ, a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (d)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with Sec. 382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40, the employer shall conduct a pre-employment alcohol and/or controlled substances test.

(e) Notwithstanding any other provisions of this subpart, all provisions and requirements in this section pertaining to pre-employment testing for alcohol are vacated as of May 1, 1995.

Sec. 382.303 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 and controlled substances each surviving driver:

(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 under State or local law for a moving traffic violation arising from the accident, if the accident involved:

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

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(3) This table notes when a post-accident test is required to be conducted by paragraphs (a)(1) and (a)(2) of this section.

Table for Sec. 382.303(a)(3)

Type of accident involved	Test must be Citation issued to the CMV driver	performed by employer
Human fatality.....	YES.....	YES.
	NO.....	YES.
Bodily injury with immediate medical treatment away from the scene	YES.....	YES.
	NO.....	NO.

Disabling damage to any motor
vehicle requiring tow away.

YES..... YES.
NO..... NO.

(b)(1) Alcohol tests. If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within eight hours. The employer's records of tests that are not completed within eight hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997, and March 15, 1998, for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Reason(s) test could not be completed within eight hours;
- (iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred; and

(3) Records of alcohol tests that could not be completed in eight hours shall be submitted to the FHWA at the following address:

Attn: Alcohol Testing Program, Office of Motor Carrier Research and Standards (HCS-1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(4) Controlled substance tests. If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(c) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

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

(e)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent

authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

(f) Exception. This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in Sec. 571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with Sec. 177.823 of this title.

Sec. 382.305 Random testing.

(a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b) (1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(c) The FHWA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by Sec. 382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(d) (1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FHWA Administrator may lower this rate to 10 percent of all driver positions if the FHWA Administrator determines that the data received under the reporting requirements of Sec. 382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent of all driver positions if the FHWA Administrator determines that the data received under the reporting requirements of Sec. 382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(e)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of Sec. 382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all driver positions.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of Sec. 382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all driver positions.

(f) The FHWA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by Sec. 382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication.

(g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent of all driver positions if the FHWA Administrator determines that the data received under the reporting requirements of Sec. 382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent. However, after the initial two years of random testing by large employers and the initial first year of testing by small employers under this section, the FHWA Administrator may lower the rate the following calendar year, if the combined positive testing rate is less than 1.0 percent, and if it would be in the interest of safety.

(h) When the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements of Sec. 382.403 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

(i) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of

being tested each time selections are made.

(j) The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the FHWA Administrator. If the employer conducts random testing for alcohol and/or controlled substances through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the consortium who are subject to random alcohol and/or controlled substances testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances random testing rule.

(k) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(l) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(m) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(n) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(o) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may--

- (1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or
- (2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

Sec. 382.307 Reasonable suspicion testing.

(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe

that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with Sec. 382.603 of this part. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e)(1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Reason(s) test could not be completed within 8 hours; and
- (iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(3) Records of tests that could not be completed in eight hours shall be submitted to the FHWA at the following address: Attn.: Alcohol Testing program, Office of Motor Carrier Research and Standards (HCS-1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(4) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform

safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

(5) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.

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

Sec. 382.309 Return-to-duty testing.

(a) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning alcohol, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(b) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning controlled substances, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

Sec. 382.311 Follow-up testing.

(a) Following a determination under Sec. 382.605(b) that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, each employer shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional in accordance with the provisions of Sec. 382.605(c)(2)(ii).

(b) Follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

Subpart D--Handling Of Test Results, Record Retention and Confidentiality

Sec. 382.401 Retention of records.

(a) General requirement. Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) Period of retention. Each employer shall maintain the records in accordance with the following schedule:

(1) Five years. The following records shall be maintained for a minimum of five years:

- (i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,
- (ii) Records of driver verified positive controlled substances test results,
- (iii) Documentation of refusals to take required alcohol and/or controlled substances tests,
- (iv) Driver evaluation and referrals,
- (v) Calibration documentation,
- (vi) Records related to the administration of the alcohol and controlled substances testing programs, and
- (vii) A copy of each annual calendar year summary required by Sec. 382.403.

(2) Two years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

(3) One year. Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) Indefinite period. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) Types of records. The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of this part. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

- (i) Collection logbooks, if used;
- (ii) Documents relating to the random selection process;
- (iii) Calibration documentation for evidential breath testing devices;
- (iv) Documentation of breath alcohol technician training;
- (v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;
- (vi) Documents generated in connection with decisions on post-accident tests;
- (vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and
- (viii) Consolidated annual calendar year summaries as required by Sec. 382.403.

(2) Records related to a driver's test results:

- (i) The employer's copy of the alcohol test form, including the results of the test;
- (ii) The employer's copy of the controlled substances test chain of custody and control form;
- (iii) Documents sent by the MRO to the employer, including those required by Sec. 382.407(a).

- (iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part; and
- (v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part.
- (vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer:

- (A) Must obtain in connection with the exception contained in Sec. 382.301 of this part, and
- (B) Must obtain as required by Sec. 382.413 of this subpart.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

- (i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and
- (ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

- (i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;
- (ii) Documentation of compliance with the requirements of Sec. 382.601, including the driver's signed receipt of education materials;
- (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;
- (iv) Documentation of training for breath alcohol technicians as required by Sec. 40.51(a) of this title, and
- (v) Certification that any training conducted under this part complies with the requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

- (i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;
- (ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);
- (iii) Quarterly laboratory statistical summaries of urinalysis required by Sec. 40.29(g)(6) of this title;
- (iv) The employer's alcohol and controlled substances testing policy and procedures; and
- (v) Records generated in connection with part 391, subpart H of this subchapter.

(d) Location of records. All records required by this part shall be maintained as required by Sec. 390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

(e)(1) OMB control number. The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB control number 2125-0543, approved through

March 31, 1997.

(2) The information collection requirements of this part are found in the following sections: Section 382.105, 382.113, 382.301, 382.303, 382.305, 382.307, 382.309, 382.311, 382.401, 382.403, 382.405, 382.407, 382.409, 382.411, 382.413, 382.601, 382.603, 382.605.

Sec. 382.403 Reporting of results in a management information system.

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(b) If an employer is notified, during the month of January, of a request by the Federal Highway Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the Federal Highway Administration by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(c) Detailed summary. Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of subpart B of this part shall include the following informational elements:

- (1) Number of drivers subject to Part 382;
- (2) Number of drivers subject to testing under the alcohol misuse or controlled substances use rules of more than one DOT agency, identified by each agency;
- (3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);
- (4) Number of positives verified by a MRO by type of test, and type of controlled substance;
- (5) Number of negative controlled substance tests verified by a MRO by type of test;
- (6) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;
- (7) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;
- (8) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;
- (9)(i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(10) (i) Number of screening alcohol tests by type of test; and

(ii) Number of confirmation alcohol tests, by type of test;

(11) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;

(12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;

(13) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in Secs. 382.503 and 382.605), in this reporting period, who previously:

- (i) Had a verified positive controlled substance test result, or
- (ii) Engaged in prohibited alcohol misuse under the provisions of this part;

(14) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and

(15) Number of drivers who were found to have violated any non-testing prohibitions of subpart B of this part, and any action taken in response to the violation.

(d) Short summary. Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than 0.02, and does not contain any other violations of subpart B of this part, may prepare and submit, as required by paragraph (b) of this section, either a standard report form containing all the information elements specified in paragraph (c) of this section, or an ``EZ'' report form. The ``EZ'' report shall include the following information elements:

(1) Number of drivers subject to this Part 382;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substance use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of negatives verified by a medical review officer by type of test;

(5) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;

(6) (i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(7) Number of screen alcohol tests by type of test; and

(8) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in Secs. 382.503 and 382.605), in this reporting period, who previously:

- (i) Had a verified positive controlled substance test result, or
- (ii) Engaged in prohibited alcohol misuse under the provisions of this part.

(e) Each employer that is subject to more than one DOT agency alcohol or controlled substances rule shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number of covered functions. Prior to conducting any alcohol or controlled substances test on a driver subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(f) A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

Sec. 382.405 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under Sec. 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(d) Each employer shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained

under this part pertaining to a driver, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the driver engaged in conduct prohibited by subpart B of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.)

(h) An employer shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

Sec. 382.407 Medical review officer notifications to the employer.

(a) The medical review officer may report to the employer using any communications device, but in all instances a signed, written notification must be forwarded within three business days of completion of the medical review officer's review, pursuant to part 40 of this title. A legible photocopy of the fourth copy of Part 40 Appendix A subtitled COPY 4--SEND DIRECTLY TO MEDICAL REVIEW OFFICER--DO NOT SEND TO LABORATORY of the Federal Custody and Control Form OMB Number 9999-0023 may be used to make the signed, written notification to the employer for all test results (positive, negative, canceled, etc.), provided that the controlled substance(s) verified as positive, and the MRO's signature, shall be legibly noted in the remarks section of step 8 of the form completed by the medical review officer. The MRO must sign all verified positive test results. An MRO may sign or rubber stamp negative test results. An MRO's staff may rubber stamp negative test results under written authorization of the MRO. In no event shall an MRO, or his/her staff, use electronic signature technology to comply with this section. All reports, both oral and in writing, from the medical review officer to an employer shall clearly include:

- (1) A statement that the controlled substances test being reported was in accordance with part 40 of this title and this part, except for legible photocopies of Copy 4 of the Federal Custody and Control Form;
- (2) The full name of the driver for whom the test results are being reported;
- (3) The type of test indicated on the custody and control form (i.e. random, post-accident, follow-up);
- (4) The date and location of the test collection;
- (5) The identities of the persons or entities performing the collection, analyzing the specimens, and serving as the medical review officer for the specific test;
- (6) The results of the controlled substances test, positive, negative, test canceled, or test not performed, and if positive, the identity of the controlled substance(s) for which the test was verified positive.

(b) A medical review officer shall report to the employer that the medical review officer has made all reasonable efforts to contact the driver as provided in Sec. 40.33(c) of this title. The employer shall, as soon as practicable, request that the driver contact the medical review officer prior to dispatching the driver or within 24 hours, whichever is earlier.

Sec. 382.409 Medical review officer record retention for controlled substances.

(a) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer, and no medical review officer shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employer or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in Sec. 382.407(a) of this subpart.

Sec. 382.411 Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substance test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated management official shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated management official shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.

Sec. 382.413 Inquiries for alcohol and controlled substances information from previous employers.

(a)(1) An employer shall, pursuant to the driver's written authorization, inquire about the following information on a driver from the driver's previous employers, during the preceding two years from the date of application, which are maintained by the driver's previous employers under Sec. 382.401(b)(1) (i) through (iii) of this subpart:

- (i) Alcohol tests with a result of 0.04 alcohol concentration or greater;
- (ii) Verified positive controlled substances test results; and
- (iii) Refusals to be tested.

(2) The information obtained from a previous employer may contain any alcohol and drug information the previous employer obtained from other previous employers under paragraph (a)(1) of this section.

(b) If feasible, the information in paragraph (a) of this section must be obtained and reviewed by the employer prior to the first time a driver performs safety-sensitive functions for the employer. If not feasible, the information must be obtained and reviewed as soon as possible, but no later than 14-calendar days after the first time a driver performs safety-sensitive functions for the employer. An employer may not permit a driver to perform safety-sensitive functions after 14 days without having made a good faith effort to obtain the information as soon as possible. If a driver hired or used by the employer ceases performing safety-sensitive functions for the employer before expiration of the 14-day period or before the employer has obtained the information in paragraph (a) of this section, the employer must still make a good faith effort to obtain the information.

(c) An employer must maintain a written, confidential record of the information obtained under paragraph (a) or (f) of this section. If, after making a good faith effort, an employer is unable to obtain the information from a previous employer, a record must be made of the efforts to obtain the information and retained in the driver's qualification file.

(d) The prospective employer must provide to each of the driver's previous employers the driver's specific, written authorization for release of the information in paragraph (a) of this section.

(e) The release of any information under this section may take the form of personal interviews, telephone interviews, letters, or any other method of transmitting information that ensures confidentiality.

(f) The information in paragraph (a) of this section may be provided directly to the prospective employer by the driver, provided the employer assures itself that the information is true and accurate.

(g) An employer may not use a driver to perform safety-sensitive functions if the employer obtains information on a violation of the prohibitions in subpart B of this part by the driver, without obtaining information on subsequent compliance with the referral and rehabilitation requirements of Sec. 382.605 of this part.

(h) Employers need not obtain information under paragraph (a) of this section generated by previous employers prior to the starting dates in Sec. 382.115 of this part.

Subpart E--Consequences For Drivers Engaging In Substance Use-Related Conduct

Sec. 382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in Sec. 382.107, and a commercial motor vehicle in interstate commerce as defined in Part 390 of this subchapter.

Sec. 382.503 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of Sec. 382.605. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of Sec. 382.605.

Sec. 382.505 Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

Sec. 382.507 Penalties.

Any employer or driver who violates the requirements of this part shall be subject to the penalty provisions of 49 U.S.C. section 521(b).

Subpart F--Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

Sec. 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

(a) General requirements. Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) Required content. The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

- (3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;
- (4) Specific information concerning driver conduct that is prohibited by this part;
- (5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under Sec. 382.303(d);
- (6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by Sec. 382.303(d) of this part;
- (7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;
- (8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;
- (9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under Sec. 382.605;
- (10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;
- (11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) Optional provision. The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) Certificate of receipt. Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

Sec. 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled

substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under Sec. 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

Sec. 382.605 Referral, evaluation, and treatment.

(a) Each driver who has engaged in conduct prohibited by subpart B of this part shall be advised by the employer of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each driver who engages in conduct prohibited by subpart B of this part shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.

(c) (1) Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance.

(2) In addition, each driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use,

(i) Shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the employer following the driver's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the driver's return to duty. The employer may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular driver. Any such testing shall be performed in accordance with the requirements of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies.

(e) The employer shall ensure that a substance abuse professional who determines that a driver requires assistance in resolving problems with alcohol misuse or controlled substances use does not refer the driver to the substance abuse professional's private practice or to a

person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a driver for assistance provided through--

- (1) A public agency, such as a State, county, or municipality;
- (2) The employer or a person under contract to provide treatment for alcohol or controlled substance problems on behalf of the employer;
- (3) The sole source of therapeutically appropriate treatment under the driver's health insurance program; or
- (4) The sole source of therapeutically appropriate treatment reasonably accessible to the driver.

(f) The requirements of this section with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment alcohol or controlled substances test or who have a pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a controlled substances test with a verified positive test result.

NOTICE TO APPLICANTS AND EMPLOYEES
ABOUT THE CITY OF GAINESVILLE'S
DRUG FREE WORKPLACE PROGRAM

In a commitment to safeguard the health of our employees, and to provide a safe working environment for everyone, a Drug-Free Workplace Program has been established by the City of Gainesville. This program is implemented pursuant to the Drug-Free Workplace Program requirements under § 440.102, Fla. Stat., the applicable rules of the agency for Health Care Administration, the Department of Labor and Employment Security and the U.S. Department of Transportation Regulations and Florida Statutes, Chapter 316.

The Program provides for the following:

1. General:

- a. The City prohibits its employees from illegally or improperly using, possessing, selling, manufacturing, or distributing drugs on its property, or while its employees are at work. It is also against City policy to report to work or to work under the influence of drugs. It is a condition of employment to refrain from using illegal drugs or alcohol on the job, or abusing legal drugs on or off the job such that it affects the job. If an injured worker refuses to submit to a test for drugs or alcohol authorized under the program and addendum thereto, he may forfeit his eligibility for medical and indemnity benefits. The drug use prohibitions and the testing procedures provided for under this Program may involve the following drugs:

Alcohol (booze)	Phencyclidine (PCP)	Benzodiazophines (Valium)
Amphetamines (Desoxyn)	Methaqualone	Methadone (Dolophine)
Cannabinoids (marijuana)	Opiates (opium)	Propoxyphene (Darvocet)
Cocaine (coke, crack)	Barbiturates (Phenobarbital)	

- b. To ensure that drugs and alcohol do not enter or affect the workplace, the City reserves the right to conduct reasonable searches of all vehicles, containers, lockers, or other items on City property in furtherance of this program. Individuals may be requested to display personal property for visual inspection upon the City's request. All personal property searches will take place only in the employee's presence. All searches under this program will occur with the utmost discretion and consideration for the employees involved. Searches for the purposes described herein will be conducted when the City has reasonable suspicion that the employee has violated the City's Drug-Free Workplace Program, and that evidence of such misconduct may be found during the search.

2. Job Applicant Drug Testing:

- a. All applicants will be tested for the presence of drugs prior to hiring.
- b. Any job applicant who refuses to submit to drug testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the pre-employment confirmatory drug test will not be hired and, unless otherwise required by law, will be ineligible for hire for a period of at least two (2) years.

3. Employee Drug Testing:

- a. Reasonable Suspicion Testing: All employees will be tested when there is a reasonable suspicion that the employee is using or has used drugs in violation of the program.
- b. Random Testing: To the extent allowed by law, employees in safety sensitive or special risk positions will be required to submit to drug testing on a random basis. Those positions designated as safety-sensitive are described on a list maintained on file in the Human Resources Department.
- c. Routine Fitness for Duty Testing: Employees will be subject to drug testing if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination applicable to all similarly situated employees.
- d. Return to Duty Testing: Any employee who does not pass a test (and has not been fired) may not return to work until meeting the Return to Duty requirements established by this program.
- e. Follow-up Testing: All employees who have entered drug rehabilitation programs while employed by the City may be subject to periodic follow-up tests as may be required.
- f. Position Change Testing: To the extent allowed by law, employees moving from a non-safety sensitive/special risk position to one designated as safety-sensitive or special risk, as a result of a formal personnel action, shall be required to successfully pass a drug test within 48 hours of receiving notification that they have been selected to fill the safety sensitive position.
- g. Additional Testing: Additional testing may also be conducted as required by applicable state or federal laws, or regulations or as deemed necessary by the City. See also addendum for CDL Drivers, Gas Pipeline Workers and Transit Operators.

4. Disciplinary Action:

- a. Any employee using, selling, purchasing, possessing, distributing, or dispensing drugs on duty or on City property, reporting to work or working under the influence of drugs, or having a positive drug test result, except first time violations found through Random Testing, will be subject to dismissal.
- b. In the case of a first-time violation of the City's policy, based on Random Testing only, an employee may be offered an opportunity to enter into a City approved and supervised rehabilitation program as an alternative to dismissal.
- c. Any employee who refuses to submit to a drug test will be dismissed from employment or otherwise disciplined by the City.
- d. An employee injured while at work who refuses to submit to a drug test, or has a positive confirmation test, may be dismissed from employment or otherwise disciplined by the City and may forfeit his eligibility for all City workers' compensation medical and indemnity benefits.

- e. Failure to consent to a reasonable search of vehicles, containers, lockers, or other items on City property, will be grounds for dismissal or reason for denial to City premises.

Confidentiality

- a. All information, interviews, reports, statement memoranda, and drug test results, written or otherwise, received by the City through a drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except as may otherwise be provided by statute or regulation. Similarly, Medical Review Officers, laboratories, employee assistance programs, drug and alcohol rehabilitation programs, and their agents and employees who receive or have access to information concerning drug test results obtained pursuant to this program shall keep all such information confidential except as provided above, or when its release is authorized pursuant to a written consent form, signed voluntarily by the person tested.
- b. Information on drug test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section shall be inadmissible as evidence in any such criminal proceeding.

6. Affect of Other Medication

Each employee or job applicant may provide any information he or she considers relevant to a drug test including identification of currently or recently used prescription or non-prescription medication or other relevant information. The employee or applicant may provide this information both before and after testing to the Medical Review Officer. The information provided shall be confidential. Employees and job applicants may consult the Medical Review Officer for technical information regarding prescription and non-prescription medication.

7. Explanation of Test Results

An employee or job applicant who receives a positive confirmed test result may contest or explain the result to the Medical Review Officer within five (5) working days after receiving written notification of the test result. If an employee's or job applicant's explanation or challenge is unsatisfactory to the Medical Review Officer, the Medical Review Officer will report a positive test result back to the City. The employee or job applicant may contest the drug result pursuant to the rules adopted by the State of Florida. An employee or job applicant is responsible for notifying the laboratory in the event he/she initiates any administrative or civil action pursuant to § 440.102, Fla. Stat., in order to ensure that the laboratory retains the specimen. Employees covered by a collective bargaining agreement or a "last chance agreement" may challenge actions taken under this program if such challenge(s) is authorized by their collective bargaining agreement, or the last chance agreement as applicable.

Over-The Counter And Prescription Drugs Which Could Alter Or Affect The Outcome Of A Drug Test

The following is a list of over-the-counter or prescription drugs which could alter or affect a test result. Due to the large number of obscure brand names and the constant marketing of new products, this list cannot be considered not intended to be all inclusive:

ALCOHOL

Liquid medications containing ethyl alcohol (ethanol). Please read the label for alcohol content. As an example, Vick's Nyquil is 25% (50 proof) ethyl alcohol, Comtrex is 20% (40 proof), Contac Severe Cold Formula Night Strength is 25% (50 proof) and Listerine is 26.9% (54 proof).

PHETAMINES

Amphetamine, Biphphetamine, Desoxyn, Dexedrine, Didrex

DRONABINOL

Dronabinol (Dronabinol, THC)

ROXAPRO

Roxapine HCl topical solution (Roxanne)

PERCOPAN

Hydrocodone bitartrate, legal by prescription.

VALIUM

Diazepam, legal by prescription.

OPIODS

Codeine, Parepectolin, Donnagel PG, Morphine, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guafacene AC, Novahistine DH, Novahistine Expectorant, Demerol (Hydromorphone), M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin, etc.

BARBITURATES

Secobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Fioricet, Esgic, Butisol, Mebaral, Phenobarbital, Butabital, Phrenilin, Triad, etc.

BENZODIAZEPINES

Alprazolam, Azene, Clonopin, Dalmane, Diazepam, Librium, Xanax, Serax, Tranxene, Valium, Vertran, Lorazepam, Paxipam, Restoril, Centrax.

METHADONE

Methadone, Methadose

HYDROXYPHENE

Hydroxyphenacetin, Darvon N, Dolene, etc.