

Number 17.2 - ALCOHOL AND CONTROLLED SUBSTANCE TESTING

Effective Date: March 1, 1996

Applicable To: All classified employees with the Executive Branch of the State of Vermont.

Issued By: Department of Personnel

Approved By: William H. Sorrell, Secretary of Administration

I - PURPOSE

This policy is promulgated in accordance with the requirements of federal law and regulation, 49 CFR Parts 382, et.al. The purpose of this policy is to establish an alcohol and controlled substances testing program for certain State of Vermont employees for the safety of all employees and the public and to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers of commercial motor vehicles. This policy outlines prohibited employee conduct concerning work related possession or use of alcohol or drugs (controlled substances) by commercial motor vehicle drivers and the steps that may be taken in response to violations of this policy. An Employee Assistance Program is available and employees are encouraged to seek assistance for substance abuse problems that could affect their employment.

II - DEFINITIONS

Unless otherwise indicated, words or phrases used in this policy shall be defined consistent with 49 CFR, Part 40.29, et. al. (August 19, 1994), and 21 VSA 511.

III - APPLICABILITY

This policy shall apply to: a) all employees of the State of Vermont who are required by the State to possess and maintain a commercial driver's license (CDL) in their present job; and b) employees of the State of Vermont for whom the State has paid for the issuance or renewal of a CDL license even though it is not necessarily required as a condition of employment in their present job; and c) employees of the State of Vermont who annually volunteer (normally during the month of October) for and are permitted to drive commercial motor vehicles for the State, but who are not required to possess and maintain a CDL in their present job, and whose CDL license is not paid for by the State. The employees subject to this policy may hereinafter be referred to as "drivers" or "CDL drivers".

NOTE: Those employees required by the State to possess a commercial driver's license, but which has not yet been paid for by the State, are also covered by this policy.

NOTE: Those CDL drivers not required to possess and maintain a CDL license may elect not to renew their annual voluntary offer to drive commercial motor vehicles and would, thereafter, not be covered by this policy.

IV - PROHIBITIONS

1. Alcohol Concentration:

0.04 Level - No CDL driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 Blood Alcohol Content (BAC) or greater. Each driver who has engaged in conduct prohibited by this section shall be subject to the provisions of section 382.605 of 49 CFR before being permitted to return to work performing safety sensitive functions, to include evaluation by a substance abuse professional (SAP), successful completion of any prescribed rehabilitation program, and return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02 BAC. Affected drivers shall be permitted to use sick leave (or annual, personal, or compensatory time off if sick leave is exhausted) for the time necessary to attend any prescribed rehabilitation program during normal working hours, and may be subject to unannounced follow-up alcohol and/or controlled substances tests following return to duty. In addition, any initial violation of the provisions of this section shall be considered to be a very serious, job-related, offense, and will result in the driver being notified, in writing, of: the extreme seriousness of the violation; that any similar conduct in the future could result in more severe disciplinary action; and that completion of any prescribed rehabilitation program is required. (See also Section VIII, Return to Duty Provisions, below). Such notice will be maintained in the employee's CDL testing file, but may be used by the employer in a current or subsequent proceeding connected with a violation of this policy. Any subsequent violation of the provisions of this policy will result in disciplinary action.

0.02 - 0.039 Level - If it is determined that an employee reports for duty or remains on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 to 0.039 BAC, (s)he shall be assigned to perform non-safety-sensitive functions for at least 24 hours from the time the determination is made, and should be given a referral to the Employee Assistance Program. In addition, any initial violation of the provisions of this section shall be considered to be a very serious, job-related, offense, and will result in the driver being notified, in writing, of: the seriousness of the violation; that any similar conduct in the future could result in more severe disciplinary action. Such notice will be maintained in the employee's CDL testing file, but may be used by the employer in a current or subsequent proceeding connected with a violation of this policy. Any subsequent violation of the provisions of this policy will result in disciplinary action. If assignment to non-safety sensitive duties is not possible, an employee may be permitted to use sick leave for the absence. If subsequent violations of this provision occur, the driver will be carried off-payroll

for the 24 hour period if assignment to non-safety sensitive duties is not possible, and may also be subject to other disciplinary action.

2. Alcohol Possession:

No CDL driver shall be on duty or operate a commercial motor vehicle while possessing alcohol, unless the alcohol is manifested and transported as part of a shipment, or is litter pickup and is not carried in the driver's compartment. Violation of this provision will result in disciplinary action.

3. On-Duty Use:

No CDL driver shall use alcohol while performing safety-sensitive functions. Violation of this provision will result in disciplinary action.

4. Pre-Duty Use:

No CDL driver shall perform safety-sensitive functions within four (4) hours after using alcohol. Violation of this provision on a normally scheduled work shift or when scheduled for overtime work, and/or when the driver has fair notice that (s)he could be contacted and required to perform unscheduled work outside normal working hours, could result in disciplinary action.

5. Use Following an Accident:

No CDL driver required to take post-accident controlled substance and alcohol tests shall use alcohol for at least eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first. Violation of this provision will result in disciplinary action. A CDL driver involved in a commercial motor vehicle accident that involves the loss of human life, or who receives a citation under State or local law for a moving traffic violation arising from the accident, would be subject to post-accident controlled substance and alcohol testing as specified in Section 382.303,a(1) and 383.303,a(2) of 49 CFR (February 15, 1994).

6. Controlled Substances Use:

No CDL driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance as defined in 49 CFR, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Each driver who has engaged in conduct prohibited by this section shall be subject to the provisions of section 382.605 of 49 CFR before being permitted to return to work performing safety sensitive functions, to include evaluation by a substance abuse professional (SAP), successful completion of any prescribed rehabilitation

program, and return to duty controlled substances test result with a verified negative result. Affected drivers shall be permitted to use sick leave (or annual, personal, or compensatory time off if sick leave is exhausted) for the time necessary to attend any prescribed rehabilitation program during normal working hours, and may be subject to unannounced follow-up alcohol and/or controlled substances tests following return to duty. In addition, any initial violation of the provisions of this section shall be considered to be a very serious, job-related, offense, and will result in the driver being notified, in writing, of: the extreme seriousness of the violation; that any similar conduct in the future could result in more severe disciplinary action; and that completion of any prescribed rehabilitation program is required. (See also Section VIII, Return to Duty Provisions, below). Such notice will be maintained in the employee's CDL testing file, but may be used by the employer in a current or subsequent proceeding connected with a violation of this policy. Any subsequent violation of the provisions of this policy will result in disciplinary action.

CDL drivers are required to inform their immediate supervisor of any use of: a non-prescription drug which a doctor or product label indicates might affect the safe performance of safety sensitive functions; and/or the use of prescription medications that a pharmacist or doctor indicates would affect the safe performance of safety sensitive duties. Employees are required to ask their doctor(s) about the effect of any prescribed medication on the performance of safety sensitive duties, and report accordingly. It is recommended that employees submit written notice to their supervisors of such therapeutic drug use that might affect the safe performance of safety sensitive functions.

NOTE: Supervisors are reminded that individual medical information is considered to be confidential, and that the inappropriate dissemination or abuse of such information could result in disciplinary action.

7. Controlled Substances Tests:

No CDL driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances as defined in 49 CFR. Each driver who has engaged in conduct prohibited by this section shall be subject to the provisions of section 382.605 of 49 CFR before being permitted to return to work performing safety sensitive duties, to include evaluation by a SAP, successful completion of any prescribed rehabilitation program, return to duty controlled substances test result with a verified negative result. Affected drivers shall be permitted to use sick leave (or annual, personal, or compensatory time off if sick leave is exhausted) for the time necessary to attend any prescribed rehabilitation program during normal working hours, and may be subject to unannounced follow-up alcohol and/or controlled substances tests following return to duty. In addition, any initial violation of the provisions of this section shall be considered to be a very serious, job-related, offense, and will result in the driver being notified, in writing, of: the extreme seriousness of the violation;

that any similar conduct in the future could result in more severe disciplinary action; and that completion of any prescribed rehabilitation program is required. (See also Section VIII, Return to Duty Provisions, below). Such notice will be maintained in the employee's CDL testing file, but may be used by the employer in a current or subsequent proceeding connected with a violation of this policy. Any subsequent violation of the provisions of this policy will result in disciplinary action.

8. Refusal to Submit to a Required Alcohol or Controlled Substances Test:

No CDL driver, or applicant for employment as a CDL driver, shall refuse to submit to, or fail to cooperate with, any random, reasonable suspicion, post-accident, or follow-up alcohol or controlled substances test required under this policy and/or Federal regulations. Any driver who refuses to submit to, or cooperate with, any such test(s) shall be placed in an unpaid leave status until the test is taken and may also be subject to disciplinary action.

V - ALCOHOL AND CONTROLLED SUBSTANCES TESTS REQUIRED

Alcohol and controlled substances testing of CDL drivers for pre-employment purposes, post-accident testing, random testing, reasonable suspicion testing, return-to-duty testing, and follow-up testing will be conducted in conformance with the provisions of Subpart C-Tests Required, 49 CFR, Parts 382 et. al. Random testing shall take place during normal working hours. Time spent in such required testing is considered to be time actually worked.

1. Pre-employment Testing:

Prior to the first time a driver performs safety-sensitive functions, the driver shall undergo testing for controlled substances and alcohol (if alcohol tests are required by 49 CFR, Part 382.301), but may be exempted at the discretion of the employer if also permitted under Federal regulations. No driver will be allowed to perform safety-sensitive functions unless (s)he has been administered an alcohol test (if required by Federal regulations), with a result indicating an alcohol concentration less than 0.04, and has received a controlled substances test result from the medical review officer indicating a verified negative test result. Original probationary employees who do not successfully complete such tests will be terminated from employment immediately. Permanent status employees who do not successfully complete such tests will be subject to the same processes and sanctions as are prescribed in Sections IV, 1, and 7, above, as appropriate.

2. Post-Accident Testing:

Alcohol and controlled substances tests shall be administered as soon as practical following an accident involving a commercial motor vehicle, as provided

for in Sections 382.303(a),1 and (a),2 of 49 CFR. (February 15, 1994). Post accident alcohol test should be administered within 8 hours following the accident, and post accident controlled substance test should be administered within 32 hours following the accident. A CDL driver involved in a commercial motor vehicle accident that involves the loss of human life, or who receives a citation under State or local law for a moving traffic violation arising from the accident, would be subject to post-accident controlled substance and alcohol testing.

3. Reasonable Suspicion Testing:

Reasonable suspicion testing shall be conducted in conformance with the provisions of 49 CFR Section 382.307. At the request of an employee required to take such a test, she/he may phone a VSEA steward for consultation and/or a steward shall be permitted to be present, so long as obtaining such representation does not unreasonably delay the administration of the test(s) (i.e., within the two hour period required by federal regulations).

VI - HANDLING OF TEST RESULTS, RECORD RETENTION, AND CONFIDENTIALITY

The creation and retention of records, reporting of results of the alcohol and controlled substances testing program, and provisions concerning access to facilities and records shall be in conformance with Subpart D, Handling of Test Results, Record Retention and Confidentiality, 49 CFR, Parts 382 et.al. Access to individual CDL testing file information, by anyone other than the assigned custodian(s) of these records, shall have the prior approval of the Department or Agency personnel officer.

NOTE: The parties agree that an employee would be allowed to view his/her own CDL testing file, on request, and in accordance with the provisions of this section, at a time convenient to, and in the presence of, the assigned custodian of the file.

VII - ALCOHOL MISUSE AND CONTROLLED SUBSTANCES USE INFORMATION, TRAINING AND REFERRAL

Educational materials concerning this policy and the Employee Assistance Program will be distributed to CDL drivers prior to the start of alcohol and controlled substances testing under this policy, and to each driver subsequently hired or transferred into a CDL driver position. Such materials shall conform to the requirements of Section 382.601 (b) of Subpart F, Alcohol Misuse and Controlled Substances Use Information, Training, and Referral, of 49 CFR Parts 382, et.al. Each CDL driver is required to sign a statement certifying that he or she has received a copy of these materials.

VIII - MISCELLANEOUS PROVISIONS

1. Return to Duty Provisions

CDL drivers, subject to the provisions of 382.605 of 49 CFR as a condition of returning to work following a violation of a provision(s) of this policy, may be permitted to return to work, performing safety sensitive functions, on a conditional basis, in the following circumstance and before fully completing a rehabilitation program prescribed by a SAP. If the SAP certifies, in writing to the appointing authority (e.g., in AOT, the District Transportation Administrator or Agency Personnel Chief), that the driver has partially complied with the prescribed rehabilitation program to the extent that s/he should be returned to work, the driver may then be administered a return to duty alcohol and/or drug test. The driver must then attain a test result indicating an alcohol concentration of less than 0.02 BAC and/or a verified negative controlled substances test before being returned to duty. Return to duty shall be conditional upon the driver's continued participation in, and full completion of, any prescribed rehabilitation program. Failure to participate in, or fully complete, the prescribed rehabilitation program shall be deemed to be a second occurrence of the original violation.

2. Split Sample Testing

In the event that: a CDL driver receives a positive test for controlled substances, as defined in 49 CFR; and federal regulations require that a split sample be made available for analysis; and the driver has the split sample independently analyzed by a qualified laboratory in accordance with applicable provisions of the federal regulations (49 CFR, part 40); and such independent analysis produces a verified negative result; then the cost of the independent analysis shall be submitted to the employer for reimbursement, along with a copy of the independent laboratory's report.