SUMMARY OF COMMERCIAL DRIVER DRUG TESTING REGULATIONS  
(49 CFR Part 382)

The following information is a summary of the new Federal Highway Administration regulations (Part 382 of Title 49 of the Code of Federal Regulations) pertaining to the testing of commercial motor vehicle operators for the use of alcohol and/or controlled substances. Attached are copies of the new regulations and a copy of revisions to Part 40 of Title 49 of the Code of Federal Regulations, pertaining to drug testing procedures associated with Part 382.

This summary should not be considered a substitute for the actual regulations, but a tool to help guide administrators through the requirements set forth in the regulations. If an administrator has any questions pertaining to the regulations, he/she should contact the Office of General Counsel.

PERTINENT DEFINITIONS

Alcohol Use: The consumption of any beverage, mixture or preparation, including medication, which contains the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Commercial Motor Vehicle ("CMV"): A motor vehicle or combination of motor vehicles used to transport passengers or property which:

1) has a gross combination weight rating or 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating or more than 10,000 pounds,
2) has a gross vehicle weight rating of 26,001 or more pounds,
3) is designed to transport 16 or more passengers, including the driver, or
4) is used in the transportation of materials which are "hazardous" under the Hazardous Materials Transportation Act and which require the vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F).

Commercial Motor Vehicle Operator ("CMVO"): A person who is employed in a position which requires or includes the duty of operating a commercial motor vehicle. The amount of time which the person spends operating commercial motor vehicles is irrelevant.

Controlled Substance Use: The illegal consumption or use of any controlled substance. This term also applies to the consumption or use of legal controlled substances, such as prescription medication, except when the consumption or use is made pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect his/her ability to safely operate a commercial motor vehicle.

Medical Review Officer ("MRO"): A licensed physician responsible for receiving laboratory results from drug testing, who has knowledge of substance abuse disorders and is trained to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.

Performing a Safety-Sensitive Function: A commercial motor vehicle operator is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
Refusal to Submit to Alcohol or Controlled Substance Test: A commercial motor vehicle operator is considered to have refused to submit to an alcohol and/or a controlled substance test when he/she fails to provide adequate breath (alcohol) or urine (controlled substances) for testing without an adequate medical explanation after he/she has received notice of the requirement for such testing. A commercial motor vehicle operator is also considered to have refused to submit to testing if he/she engages in conduct that clearly obstructs the testing process.

Regulations: Except as otherwise specified, this term refers to Parts 382 and 40 of title 49 of the Code of Federal Regulations, which set forth the U.S. Department of Transportation (“DOT”) rules for the Federal Highway Administration (“FHA”), regulating the use of alcohol and controlled substances by commercial vehicle operators, the consequences of such use for commercial vehicle operators and their employers, and the procedures by which testing of commercial vehicle operators for alcohol and controlled substance use is to be conducted.

Safety-Sensitive Function: Any of the following which are performed by a commercial motor vehicle operator:
1) All time spent at a plant, terminal, facility or other property, or on any public property, waiting to be dispatched, unless relieved from duty;
2) All time spent inspecting equipment pursuant to 49 CFR §§ 392.7, 392.8 (relating to inspection of parts, accessories and emergency items), 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 spent in or upon any commercial motor vehicle except for time spent resting in a sleeper berth;
5) All time spent 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;
6) All time spent performing the requirements of 49 CFR §§ 392.40, 392.41 relating to stops, precautions and emergency assistance at the scenes of accidents, and associated information-gathering duties;
7) All time spent repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;
8) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, when directed by a motor carrier;
9) Performing any other work in the capacity of, or in the employ or service of, a common, contract or private motor carrier;
10) Performing any compensated work for any nonmotor carrier entity.

Substance Abuse Professional: A licensed physician 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 substance-related disorders.

PROHIBITIONS ON COMMERCIAL MOTOR VEHICLE OPERATORS

Commercial motor vehicle operators are prohibited from doing any of the following:
1) operating a CMV while using or under the influence of alcohol or controlled substances;
2) performing safety-sensitive functions while using alcohol or within four hours of consuming alcohol;
3) reporting for or remaining on duty requiring safety-sensitive functions with a BAC of .04 or greater or while using a controlled substance;
4) operating a CMV while in possession of alcohol which is not manifested and transported as part of a shipment;
5) reporting for duty, remaining on duty, or performing a safety-sensitive function after testing positive for controlled substances;
6) if required to take a post-accident alcohol test, consuming alcohol within eight hours following the accident and before the test is taken;
7) refusing to submit to an alcohol or controlled substance test.

PROHIBITIONS ON EMPLOYERS OF COMMERCIAL MOTOR VEHICLE OPERATORS

An employer of CMVOs is prohibited from permitting a CMVO employee to operate CMVs or perform safety-sensitive functions when the employer has actual knowledge that the employee is in violation of one or more of the aforementioned prohibitions on CMVOs. In addition, an employer may require a CMVO employee to inform the employer of any therapeutic drug use by that employee.

An employer of CMVOs is prohibited from permitting a CMVO employee to operate CMVs or perform safety-sensitive functions when the employee has failed or not yet taken a required alcohol or controlled substances test. Further, an employer may not permit a CMVO employee to operate CMVs or perform safety-sensitive functions for at least 24 hours after the employee has taken an alcohol test which indicates a BAC of .02 but less than .04 (no other action against the employee is authorized by the regulations in this instance, although the employer may take other action which is independently authorized by other laws or regulations not inconsistent with the regulations).

TESTING

The testing requirements apply only to persons employed as CMVOs or applicants for CMVO positions (employees transferring from non-CMVO positions to CMVO positions should be treated like applicants, for purposes of the regulations). The part-time, temporary or probationary status of employed CMVOs or CMVO positions for which people are applying is irrelevant. Before performing an alcohol or controlled substance test, an employer is required to notify a CMVO applicant/employee that the test is required by Part 382 of Title 49 of the Code of Federal Regulations. Alcohol and controlled substance testing must be performed in accordance with the specifications set forth in Part 40 of Title 49 of the Code of Federal Regulations. A copy of Part 40 is attached to this summary. The procedures described below determine when alcohol and/or controlled substance testing must take place.

Pre-employment Testing
Alcohol
All CMVO applicants must take an alcohol test which shows a blood alcohol concentration ("BAC") of less than .04.
Exception: alcohol testing is unnecessary for an applicant who has taken such a test and come up less than .04 in the past six months, provided that we ensure that no prior employer has knowledge of records indicating a violation of 49 CFR Part 382 (which prescribes the policies described herein) or any other DOT agency alcohol misuse rules in the past six months.
Controlled Substances
All CMVO applicants must take a controlled substances test which shows a verified negative result.

Exception: controlled substance testing is unnecessary if an applicant:
1) has participated in a drug-testing program satisfying the regulations' requirements within the past 30 days and
2) while in the program, was tested for controlled substances within the past six months or participated in a random testing program for the past 12 months (all times pertain to date of application for job), provided that the employer ensures that no prior employer has knowledge of records of a violation of the regulations or any other DOT agency controlled substance use rules in the past six months.

Post-accident Testing
When testing must occur
Alcohol Testing
When a CMV has been involved in an accident:
An alcohol test should be performed within two hours of the accident, but in no event can it be performed more than eight hours after the accident. Employees subject to testing must remain available for such testing during this time; the availability requirement should not be construed so as to delay or prevent necessary medical attention for injured people or to prevent an employee from obtaining assistance in responding to the accident or in securing emergency medical care.

Failure to perform the test within two hours requires a written statement from the employer giving reasons for the delay; the statement must be kept on file.

Controlled Substances Testing
When a CMV has been involved in an accident:
A controlled substances test must be performed within 32 hours of the accident. Employees subject to testing must remain available for such testing during this time; the availability requirement should not be construed so as to delay or prevent necessary medical attention for injured people or to prevent an employee from obtaining assistance in responding to the accident or in securing emergency medical care.

Failure to perform the test within 32 hours requires a written statement from the employer giving reasons for the delay; the statement must be kept on file.

Who must be tested
1) if the accident involved a loss of human life, any surviving person who was performing safety-sensitive functions with respect to the commercial motor vehicle must be tested for alcohol and controlled substances.
2) any person who receives a citation for a moving traffic violation arising from the accident must be tested for alcohol and controlled substances.

Other requirements
The employer must provide information pertaining to post-accident testing to CMVOs, prior to the operation of a CMV, so that these employees will be able to comply with the testing requirements set forth above.
Random Testing
During each calendar year, random alcohol and controlled substance testing must be performed on CMVOs.

Alcohol Testing Requirement
Each year, enough CMVO employees must be tested for alcohol to equal or exceed 25 percent of the average number of CMVO positions for that year.

Controlled Substance Testing Requirement
Each year, enough CMVO employees must be tested for controlled substances to equal or exceed 50 percent of the average number of CMVO positions for that year.

Changes of Testing Rates
The percentages listed above for random testing may be raised or lowered each year by the FHA Administrator, depending on the number of violations within the industry. Changes, if made, will be published in the Federal Register, to take effect in the following calendar year.

Selection of Employees for Testing
Selection of employees for random alcohol and controlled substance testing must be done separately and by a scientifically valid method. A computer-based random number generator that is matched with identifying numbers such as Social Security numbers or payroll identification numbers is considered acceptable. Each CMVO employee must have an equal chance of being selected.

Each employee who is subject to random testing must be capable of being randomly selected every calendar year. Employees do not “fall off the list” until all other employees have been tested in subsequent years; thus, it is possible that one employee may be randomly tested for several consecutive years while another employee is not tested at all during the same time.

Timing of Random Tests
Random tests shall not be announced ahead of time, and the dates upon which random tests are to be performed should be reasonably dispersed throughout the calendar year. An employee who happens to be randomly selected for both alcohol and controlled substance testing does not have to be tested for both simultaneously; simultaneous testing is not prohibited, however.

Testing Procedures
An employee, when notified of his/her selection for random testing, must proceed immediately to the facilities designated for such testing. The requirement of immediate testing has the following exceptions:
   If an employee is performing a safety-sensitive function at the time he/she is notified, the employer must ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

   An employee being tested for alcohol shall only be tested 1) while he/she is performing safety-sensitive functions, 2) just before he/she is to perform safety-sensitive functions, or 3) just after he/she ceases to perform safety-sensitive functions.

Reasonable Suspicion Testing
When an employer has a reasonable suspicion that a CMVO employee:
1) is operating or has recently operated a CMV while using or under the influence of alcohol or controlled substances,
2) is performing or has recently performed safety-sensitive functions while using alcohol or within four hours of consuming alcohol,
3) has reported for duty requiring safety-sensitive functions with a BAC of .04 or greater or while using a controlled substance, or
4) operated a CMV while in possession of alcohol which was not manifested and transported as part of a shipment, the employer shall require the employee to test for alcohol and/or controlled substances (relative to the suspicion).

"Reasonable Suspicion"
"Reasonable suspicion" must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee (with respect to controlled substances, the observations may include indications of the chronic and withdrawal effects of controlled substances). The observations must be made by a supervisor or official who has received training on alcohol misuse and controlled substance use.

Timing of Observations Relative to Alcohol Use
The observations leading to a reasonable suspicion of an alcohol use violation must be made during, just preceding, or just after the period of the work day that the employee is required to comply with federal rules regarding CMVO alcohol use.

An employee being tested for alcohol shall only be tested 1) while he/she is performing safety-sensitive functions, 2) just before he/she is to perform safety-sensitive functions, or 3) just after he/she ceases to perform safety-sensitive functions.

Timing of Alcohol Testing
An alcohol test should be performed within two hours of the accident, but in no event can it be performed more than eight hours after the accident. Failure to perform the test within two hours requires a written statement from the employer giving reasons for the delay; the statement must be kept on file.

Notwithstanding a failure by the employer to timely administer an alcohol test upon reasonable suspicion, an employer who reasonably suspects an employee of violating federal rules pertaining to alcohol use by CMVOs cannot permit the employee to perform or continue to perform safety-sensitive functions until:
1) the employee takes an alcohol test which indicates a BAC of less than .02 or
2) 24 hours have elapsed following the determination that a reasonable suspicion of an alcohol use violation existed.

Observations Re Controlled Substance Use
A written record must be made of the observations leading to a controlled substance reasonable suspicion test. The record must be signed by the supervisor or official who made the determination that a reasonable suspicion existed. The record must be made within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier.

Return-to-Duty Testing
Alcohol Violations
Before permitting a CMVO employee to return to duty performing safety-sensitive functions after it has been determined that the employee violated federal rules regarding CMVO alcohol use, the employer must require the employee to undergo a return-to-duty alcohol test with a result indicating a BAC of less than .02.
Controlled Substance Violations
Before permitting a CMVO employee to return to duty performing safety-sensitive
customs after it has been determined that the employee violated federal rules regarding
CMVO controlled substance use, the employer must require the employee to undergo a
return-to-duty controlled substance test with a verified negative result.

Follow-up Testing
Following a return to duty after having committed an alcohol or controlled substance violation,
a CMVO employee may be subject to follow-up testing if a substance abuse professional
determines that the employee is in need of assistance in resolving problems with alcohol misuse
and/or controlled substance use.

Notification of Test Results
Pre-Employment Tests
If an applicant for a CMVO position requests the results of his/her pre-employment
controlled substance test within 60 days of being notified of the disposition of his/her
employment application, the employer must notify the applicant of the results.

Other Tests
An employer is required to notify a CMVO employee of any verified positive results after a
test for controlled substances. The employer must also inform the employee which
controlled substance(s) were verified as positive.

REPORTING REQUIREMENTS

Annual Summary of Test Results
Employers must prepare and maintain an annual calendar year summary of the results of their
alcohol and controlled substances testing programs performed under the regulations. By
March 15 of each year, all employers must complete an annual summary covering the previous
calendar year.

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

Contents of Annual Summary
Each annual calendar year summary that contains information on a verified positive
controlled substances test result, an alcohol screening test result of .02 or greater, or any
other violation of the alcohol misuse provisions of the regulations must include the
following informational elements:
1) Number of CMVOs;
2) Number of CMVOs subject to testing under the alcohol misuse or controlled
substances use rules of more than one Department of Transportation 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 medical review officer, by type of test, and type of controlled substance;
5) Number of negative controlled substance tests verified by a medical review officer, by type of test;
6) Number of persons denied a position as a CMVO following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates a BAC of .04 or greater;
7) Number of CMVOs with tests verified positive by a medical review officer for multiple controlled substances;
8) Number of CMVOs who refused to submit to an alcohol or controlled substances test required under the regulations;
9) Number of supervisors who have received required alcohol training during the reporting period;
10) Number of supervisors who have received required controlled substances training during the reporting period;
11) Number of screening alcohol tests by type of test;
12) Number of confirmation alcohol tests, by type of test;
13) Number of confirmation alcohol tests indicating an alcohol concentration of .02 or greater but less than .04, by type of test;
14) Number of confirmation alcohol tests indicating a BAC of .04 or greater, by type of test;
15) Number of CMVOs who were returned to duty (having complied with the recommendations of a substance abuse professional as described in the regulations), 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 the regulations;
16) Number of CMVOs 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 a BAC of .04 or greater; and
17) Number of CMVOs who were found to have violated any non-testing prohibitions of the regulations, and any action taken in response to the violation.

**Standard and “EZ” Report Forms**

Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than .02, and does not contain any other violations of the prohibitions regarding alcohol and/or controlled substances use, may prepare and submit either a standard report form containing all the information elements specified above in “Contents,” or an "EZ" report form. The "EZ" report shall include the following information elements:

1) Number of CMVOs subject to the regulations;
2) Number of CMVOs subject to testing under the alcohol misuse or controlled stance 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 CMVOs who refused to submit to an alcohol or controlled substances test required under this subpart;
6) Number of supervisors who have received required alcohol training during the reporting period; and 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 CMVOs who were returned to duty (having complied with the recommendations of a substance abuse professional), 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 the regulations.

Use of Consortiums for Annual Summaries
A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with the regulations. 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.

RETENTION OF AND ACCESS TO RECORDS

Each employer must maintain records of its alcohol misuse and controlled substance use prevention programs. The records must be maintained in a secure location with controlled access.

Periods of Retention
Each employer shall maintain the records in accordance with the following schedules:

Five years:
1) Records of CMVO alcohol test results with results indicating an alcohol concentration of .02 or greater;
2) Records of CMVO verified positive controlled substances test results;
3) Documentation of refusals to take required alcohol and/or controlled substances tests;
4) Calibration documentation;
5) CMVO evaluation and referrals; and
6) A copy of each annual calendar year summary.

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

One year:
Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than .02.

Types of records
The following specific records shall be maintained:

Records related to the collection process
1) Collection logbooks, if used;
2) Documents relating to the random selection process;
3) Calibration documentation for evidential breath testing devices;
4) Documentation of breath alcohol technician training;
5) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;
6) Documents generated in connection with decisions on post-accident tests;
7) Documents verifying existence of a medical explanation of the inability of a CMVO to provide adequate breath or to provide a urine specimen for testing; and
8) Consolidated annual calendar year summaries.
Records related to a CMVO's test results
1) The employer's copy of the alcohol test form, including the results of the test;
2) The employer's copy of the controlled substances test chain of custody and control form;
3) Documents sent by the MRO to the employer, including notifications required by the regulations;
4) Documents related to the refusal of any CMVO to submit to an alcohol or controlled substances test required by this part; and
5) Documents presented by a CMVO to dispute the result of an alcohol or controlled substances test administered under this part.

Records related to other violations of this part

Records related to evaluations
1) Records pertaining to a determination by a substance abuse professional concerning a CMVO's need for assistance; and
2) Records concerning a CMVO's compliance with recommendations of the substance abuse professional.

Records related to education and training
1) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;
2) Documentation of compliance with the requirements of providing information to CMVOs about the regulations and the employer's testing policies and procedures, including the CMVO's signed receipt of education materials;
3) 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; and
4) Certification that any training conducted under this part complies with the requirements for such training.

Records related to drug testing
1) Agreements with collection site facilities, laboratories, medical review officers, and consortia;
2) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);
3) Monthly laboratory statistical summaries of urinalysis required by the regulations; and
4) The employer's drug testing policy and procedures.

Location of records
All records required by this part shall be maintained as required by 49 CFR §390.31 (originals or certified microfilm) 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 FHA.

Access to Facilities and Records.
Confidentiality of Records
Except as required by law or expressly authorized or required by the regulations, no employer may release CMVO information that is contained in records required to be maintained under the regulations.
Employee's Right of Access
A CMVO is entitled, upon written request, to obtain copies of any records pertaining to the CMVO's use of alcohol or controlled substances, including any records pertaining to his/her alcohol or controlled substance tests. The employer must promptly provide the records requested by the CMVO. Access to a CMVO's records shall not be contingent upon payment for records other than those specifically requested.

Access by State, Federal Officials
Each employer shall permit access to all facilities utilized in complying with the regulations to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its CMVOs.

Each employer must 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 CMVOs.

When requested by the National Transportation Safety Boards 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.

Access by Subsequent Employers
Records must be made available to a subsequent employer upon receipt of a written request from a CMVO. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the CMVO's request.

Access re Legal Proceedings
An employer may disclose information required to be maintained under the regulations pertaining to a CMVO to 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 the regulations, or from the employer's determination that the CMVO engaged in conduct prohibited by the regulations (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the CMVO.)

Permission of Employee
An employer must release information regarding a CMVO's records as directed by the specific, written consent of the CMVO 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.

Medical Review Officer Responsibilities
Notification to Employer
The MRO 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 MRO's review, pursuant to the regulations. An MRO shall report to an employer clearly:
1) That the controlled substances test being reported was in accordance with Parts 40 and 382 of Title 49 of the Code of Federal Regulations;
2) The name of the individual 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, etc.);
4) The date and location of the test collection;
5) 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;
6) The verified results of a controlled substance test, either positive or negative, and if positive, the identity of the controlled substance(s) for which the test was verified positive.

An MRO must report to the employer that the MRO has made all reasonable efforts to contact the CMVO as provided in the regulations. The employer shall, as soon as practicable, request that the CMVO contact the MRO prior to dispatching the CMVO or within 24 hours, whichever is earlier.

Retention of Records by Medical Review Officer
An MRO must retain the following records:

Five Years:
All dated records and notifications, identified by individual, for verified positive controlled substance test results.

One Year:
All dated records and notifications, identified by individual, for negative and canceled controlled substance test results.

No person may obtain the individual controlled substance test results retained by an MRO, nor may an MRO disclose such results without the specific, written authorization of the CMVO(s). However, the MRO does not need to obtain such authorization to disclose the information described in "Notification to Employer" above to:

1) the CMVO’s employer;
2) the Secretary of Transportation;
3) any DOT agency, or
4) any State or local officials with regulatory authority over the controlled substance testing program under the regulations.

Obtaining Records From Previous Employers
Optional
With a CMVO’s consent, an employer is entitled to obtain from the CMVO’s previous employers any information they maintain with respect to that CMVO pursuant to the regulations.

Mandatory
With a CMVO’s consent, an employer is required to obtain from the CMVO’s previous employers all information on the CMVO’s alcohol tests with a BAC of .04 or greater, positive controlled substance test results, and refusals to be tested within the two years preceding the CMVO’s first performance of safety-sensitive functions for the current employer.
All such records must be reviewed by the employer within 14 days after the CMVO first performs safety-sensitive functions for the employer; if feasible, the employer should attempt to obtain and review the records before the CMVO performs safety-sensitive functions. If the employer fails to review the records within the 14-day period, the employer may not permit the CMVO to perform safety-sensitive functions until the records are obtained and reviewed.

Even if the CMVO ceases to perform safety-sensitive functions within 14 days after first performing such functions, the employer is still obligated to obtain the above-referenced information.

Conditions of Release by Previous Employers
The above-referenced consent of the CMVO must be specific and made in writing. The release of information by previous employers may be in the form of personal interviews, telephone interviews, letters, or any other method that ensures confidentiality.

An employer must maintain a written, confidential record with respect to each past employer contacted.

Use of Information Released by Previous Employers
An employer may not permit a CMVO to perform safety-sensitive functions if the employer obtains information on a CMVO's alcohol test with a BAC of .04 or greater, verified position controlled substance test result, or refusal to be tested, until 1) the employer subsequently obtains information on a substance abuse professional evaluation and 2) the CMVO successfully takes a return-to-duty test.

PENALTIES
Employers and/or CMVO employees who violate any part of the regulations are subject to the penalty provisions of 49 U.S.C. § 521(b). Possible penalties include civil fines of up to $10,000 per day for employers and $1,000 per day for employees, imprisonment for up to 90 days, criminal fines of up to $5,000, suspension of part or all of the employer's use of commercial motor vehicles, and suspension and/or revocation of a CMVO's commercial motor vehicle driver's license.

INFORMATION, TRAINING AND REHABILITATION

Employer's Duty to Provide Information
Prior to the start of alcohol and controlled substance testing, employers must provide educational materials to all existing CMVO employees. These materials will explain the requirements set forth in the regulations and the employer's policies and procedures with respect to meeting those requirements. These materials will be given to new CMVO employees as they are hired or transferred into CMVO positions. Employers must also provide written notice to representatives of employee organizations of the availability of these materials.

Information Required to Be Distributed
The aforementioned informational material must contain detailed discussion of the following:
1) The identity of the person(s) designated by the employer to answer questions about the materials;
2) The categories of employees who are subject to alcohol and controlled substance use prohibitions and testing;
3) Sufficient information about the safety-sensitive functions performed by CMVO employees to clarify what periods of the work day they will be performing work that subjects them to the requirements of the regulations;
4) Specific information concerning conduct that is prohibited with respect to alcohol and controlled substance use;
5) The circumstances under which a CMVO employee will be tested for alcohol and/or controlled substances pursuant to the regulations;
6) The procedures that will be used in alcohol and controlled substance testing, including procedures to protect the employee and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee;
7) The requirements that a CMVO employee submit to alcohol and controlled substance testing required by the regulations;
8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test and the consequences thereof;
9) The consequences for CMVO employees who violate the regulations’ prohibitions on alcohol and controlled substance use, including the requirement of removing them from safety-sensitive functions and the requirement of referral, evaluation and treatment by a substance abuse professional;
10) The consequences for CMVO employees who have a BAC of .02 or greater but less than .04;
11) Information concerning the effects of alcohol and controlled substance use on an individual’s health, work and personal life; signs and symptoms of an alcohol or a controlled substances problem (the employee’s or a co-worker’s), and available methods of intervening when an alcohol or a controlled substance problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

The aforementioned informational material may contain information on additional employer policies with respect to the use or possession of alcohol or controlled substances, including any consequences for an employee found to have a specified alcohol or controlled substance level, which are based on authority independent of the regulations. Such additional policies must be clearly described as being based on independent authority.

Confirming Receipt of Information
An employer must confirm that each CMVO employee has received the informational materials described above. The employer must have each CMVO employee sign a statement certifying that he or she has received a copy of these materials. The employer must keep the original signed statement, but may provide a copy of the statement to the employee.

Training of Supervisors
An employer must ensure that all persons designated to determine whether reasonable suspicion exists to require a CMVO employee to undergo alcohol and/or controlled substance testing receive at least 60 minutes of training on alcohol misuse and at least an additional 60 minutes of training on controlled substance use. The training must cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

Referral, Evaluation, and Treatment of CMVO Employees
Referral to Substance Abuse Professionals and Programs
An employer must take certain steps with respect to a CMVO employee who has been found to have violated the prohibitions regarding alcohol and/or controlled substance use. These steps include:
1) Advising the employee of the resources available to the employee in evaluating and resolving problems associated with the misuses of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs;
2) Requiring the employee to be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems stemming from alcohol misuse and/or controlled substance use.

Subsequent Testing and Rehabilitation

Return to Duty Testing
An employee who has been found to have violated the prohibitions regarding alcohol and/or controlled substance use must take a return-to-duty test before returning to duty requiring the performance of safety-sensitive functions. The return-to-duty test is described in “Testing.”

Follow-up Testing
If an employee has been identified by a substance abuse professional as needing assistance in resolving alcohol and/or controlled substance-related problems, the employee shall be further evaluated by a substance abuse professional to determine whether the employee has followed and rehabilitation program which may have been prescribed and shall be subject to unannounced follow-up alcohol and controlled substance tests following his/her return to duty.

The number and frequency of the follow-up tests shall be determined by the substance abuse professional, but must consist of at least six tests in the first 12 months following the employee’s return to duty. If the substance abuse professional believes it is necessary, the employer may direct the employee to submit to both alcohol and controlled substance testing, even if the employee did not violate prohibitions for both alcohol and controlled substances. Follow-up testing may not exceed a period of 60 months after the employee’s return to duty, and the substance abuse professional may terminate the follow-up testing at any time after the first six follow-up tests are performed.

Rehabilitation
Evaluation and rehabilitation may be provided by the employer or a substance abuse professional (whether or not affiliated with the employer). The choice of substance abuse professional and assignment of costs must be made in accordance with any existing employer/employee agreements and/or employer policies.

The employer must ensure that the substance abuse professional does not engage in a conflict of interest by referring an employee to a practice or program in which the substance abuse professional receives remuneration or has a financial interest. The substance abuse professional is not considered to be in conflict if he/she refers an employee to assistance provided through:
1) a public agency;
2) the employer or a person under contract to provide treatment for alcohol and/or controlled substance problems on behalf of the employer;
3) the sole source of therapeutically appropriate treatment under the employee’s health insurance program; or
4) the sole source of therapeutically appropriate treatment reasonably accessible to the employee.
IMPACT OF REGULATIONS ON DISCIPLINARY PROCEEDINGS

The regulations do not compel employers to suspend, demote, dismiss or otherwise discipline CMVO employees who violate the prohibitions concerning alcohol and controlled substance use. Similarly, the regulations do not prohibit such discipline.

The regulations specify that an employer cannot permit a CMVO employee to perform safety-sensitive functions after he/she has failed an alcohol or controlled substance test, until certain follow-up matters occur; this is not a requirement of a suspension, since a CMVO employee may be assigned non-safety-sensitive functions to perform. Thus, issuing an immediate suspension, demotion, or dismissal to an employee who violates the regulations' prohibitions would be improper and would violate the employee's Skelly due process rights.

Drunkenness on duty and addiction to controlled substances are grounds for discipline of CSU employees, up to and including termination. It is appropriate to proceed with discipline in the manner prescribed by the Education Code after an employee is found to have been using or under the influence of alcohol and/or controlled substances while on duty or before coming on duty.