



# FMCSA DRUG AND ALCOHOL PROGRAM MANUAL

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Version 4.0

## Disclaimer:

This manual has been prepared with care for the use of your Designated Employer representatives, Supervisors, and Managers. It is not, however, designed to be comprehensive or to provide legal, accounting, or other professional services. In addition, due to the ever-changing nature of State and/or Federal laws and regulations, the information presented is subject to change without notice.

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# Section 1:

## General Program Information

### I-A. The Drug and Alcohol Program Manual

This manual has been designed to be a viable tool for the Drug and Alcohol Program Manager/Designated Employer Representative (DAPM/DER). The DAPM/DER will find this manual helpful when referencing routine, as well as, occasional situations that arise.

#### Subjects covered in Section I-A are:

1. Sections Of The Manual
2. When You Need Help

#### 1. Sections of the Manual

To make this manual a handy reference tool we have provided the topics in outline format.

This manual is divided into:

- SECTIONS (I – V) - Identified below
- SUB-SECTIONS (A – Z) – Headings within the section
- SUBJECTS (1 – 100) – Topics that are covered within each sub-section are highlighted at the beginning of each sub-section.

Example: To find out how to perform the drug and alcohol violation inquiry for an applicant, you would go to I-F. HIRING A DRIVER, Subject 7. PERFORMING THE CONTROLLED SUBSTANCES AND ALCOHOL INQUIRY.

This Manual is broken down into the following sections.

- **Section I. General Program Information** – Covers most of the fundamentals of the program.
- **Section II. Drug and Alcohol Testing** – Reviews the

required testing situations and collection procedures.

- **Section III. Appendix** – Includes basic checklists for the most routine activities a DAPM/DER needs to complete. You may wish to copy and post these for a quick reference.
- **Policy and Manual CD** – The Policy and Manual CD includes an electronic copy of this Manual, along with the Policy and Educational Materials and the forms the DAPM/DER needs to effectively manage the drug and alcohol testing program.

#### 2. When You Need Help

Should you have a unique situation, or require help for a post-accident or reasonable-suspicion determination, Foley Carrier Services, LLC. is available to provide assistance 24 hours a day at the following numbers:

- **Telephone** (800) 253-5506
- **Fax** (860) 913-2454 or (860) 913-2457

Our normal business hours are 8:30 AM to 5:00 PM Eastern time, Monday through Friday. If you need assistance after normal business hours, or on weekends due to an emergency or a very important problem, please tell the answering service that you have an EMERGENCY and someone will contact you as soon as possible.

### I-B. Responsibilities

In this section we discuss the responsibilities of some of the individuals involved with your drug and alcohol testing program.

#### Subjects covered in Section I-B are:

1. Employer Responsibilities
2. Drug And Alcohol Program Managers (DAPM) Designated Employer Representative (DER)-(DAPM/DER)
3. Medical Review Officer (MRO)
4. Substance Abuse Professional (SAP)
5. Consortium/Third Party Administrator (C/TPA)

#### 1. Employer Responsibilities

As an employer, you are responsible for meeting all applicable requirements and procedures of 49 CFR Parts 382 and 40. You are responsible for all actions taken in carrying out the DOT agency regulations. You remain responsible for compliance with all applicable requirements of Parts 382 and 40.

**Note:** Over time there may be technical corrections and written guidance issued for Parts 382 and 40. We at Foley Carrier Services, LLC. will append any documents as needed should the changes affect the regulatory requirements

as stated in this manual and/or the standard policies. Those changes will be made available to all clients in good standing with Foley Carrier Services, LLC.

## 2. Drug and Alcohol Program Manager (DAPM) and Designated Employer Representative (DER) – (DAPM/DER)

Employers need to have an individual identified as the key person who is responsible for the overall management of the drug and alcohol testing program. The DOT agencies often refer to this person as the Drug and Alcohol Program Manager (DAPM).

However, when Part 40 was published, they defined a new title for individuals who are able to “implement” the requirements of the program. This is the Designated Employer Representative (DER).

What’s the difference? Our opinion...

**DAPM** – The DAPM is the individual who is responsible for the overall compliance of the program. This person may or may not perform any of the routine activities that are a part of the implementation of the program.

**DER** – The DER is responsible for many of the activities (e.g., notifying an individual to go for a test, receive test results, remove an individual from driving duties, etc.) that need to be performed on a routine basis.

For most of our clients this will not be an issue since most have a clear understanding as to which individual is ultimately responsible for their program’s compliance. For many clients the DAPM and the DER is the same person.

**Additional Contact Person** – We request that our clients provide us with the name(s) of additional DERs to enable us to convey important and timely information affecting your program in the absence of the DAPM or DER.

**DAPM/DER** – We believe our materials will be used by the DAPM and the DERs, therefore, Foley Carrier Services, LLC. shall refer to the individuals with whom we communicate as the DAPM/DER. This manual has been written as a guide for the DAPM/DER.

### FUNCTIONS

The DAPM/DER is the contact for a variety of items including the following:

- Receive general correspondence, newsletters, and announcements from Foley Carrier Services, LLC.
- Notify Foley Carrier Services, LLC. of driver additions to and deletions from the program
- Notify Foley Carrier Services, LLC. of any changes to employer contacts to whom confidential information may be released
- Coordinate pre-employment activities, which include conducting the applicant’s controlled substances and/or alcohol test inquiry, and ensuring appropriate forms have been completed and signed

- Ensure that all appropriate forms are completed and signed by current drivers
- Coordinate reasonable-suspicion training for all supervisors of drivers and ensure they have signed a form indicating that they have completed the required training
- Copy and provide The Controlled Substances and Alcohol Policy for Drivers and Educational Materials to individuals in the program
- Receive confidential notifications of random selections from Foley Carrier Services, LLC. and coordinate the random testing activities
- Maintain a supply of laboratory custody and control forms (CCFs) and directions to the collection site(s)
- Schedule appointments at the designated collection site and, at the appropriate time; notify the selected individuals to proceed immediately to the collection site for testing
- Provide individuals with proper laboratory custody and control forms when sent out for a drug test
- Provide individuals selected for a test with a Federal Test Notification and Authorization Form. Document the individual’s applicability for testing
- Ensure that individuals arrive at the collection site on a timely basis
- Coordinate Management Information Systems reports
- Maintain SEPARATE CONFIDENTIAL internal files for the Drug and Alcohol Testing Program
- Monitor non-negative drug and positive alcohol test results for individuals to determine appropriate actions
- Provide individuals who have a “shy bladder” or “shy lung” situation with the proper guidance to have a medical evaluation and ensure that the evaluation was completed

## 3. Medical Review Officer (MRO)

### QUALIFICATIONS

To be qualified to act as a Medical Review Officer (MRO) in the DOT drug testing program, the MRO shall be a licensed physician (Doctor of Medicine or Osteopathy).

The MRO shall be knowledgeable about:

- And have clinical experience in controlled substance abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed positive drug test results.
- Issues relating to adulterated, substituted and invalid specimens
- The DOT MRO Guidelines
- DOT agency rules which are applicable to the employer for whom the MRO evaluates drug test results

The MRO is required to undergo qualification training,

satisfactorily complete an examination for MRO certification, as well as complete continuing education that keeps the MRO abreast of the new technologies, interpretations, rule changes, etc.

## FUNCTIONS

The following functions are performed by Foley Carrier Services' MRO:

- Act as an independent "Gatekeeper" and advocate for the accuracy and integrity of the drug testing process
- Receive and review Copy 2 of the CCF for all specimen collections to determine if there is a problem that may cause a test to be cancelled
- Correct problems where possible (e.g. cancelled or problematic tests, incorrect results, problems with blind samples)
- Conduct a verification interview, via telephone, with the donor for non-negative drug test results
- Inform donor to have his/her physician contact the MRO within 3 days if the donor's use of a medication could pose a safety problem
- Direct the DAPM/DER to inform the employee to contact the MRO (if MRO has been unable to make contact)
- Deem a result as a "non-contact positive" when the employee fails to contact the MRO within 72 hours of notification by employer to contact MRO
- Interpret drug and validity test results to determine if there is a legitimate medical explanation for the laboratory's confirmed positive, adulterated, substituted or invalid drug test result
- Provide written notice to the laboratory to send a specimen to a second laboratory when an individual requests a test of the split specimen
- Direct donor to a "referral physician" for a further medical evaluation regarding non-negative drug test results, if applicable
- Assess a physician's recommendation in determining whether an employee has a medical condition that has, or with a high degree of probability, could have, precluded the employee from providing sufficient amount of urine or breath in the "shy bladder" and "shy lung" scenarios
- Inform DAPM/DER when an additional collection is to immediately occur (if test was invalid and MRO had to cancel it)
- Immediate reporting of verified positive results, results requiring an immediate collection under direct observation, adulterated or substituted specimens, and other refusals to test to the DAPM/DER
- Report written drug test results in a confidential manner within two days of verification to the DAPM/DER
- Release information to the employer, a physician or other health care provider responsible for determin-

ing the medical qualifications of a driver, SAP evaluating the individual, a DOT agency, or NTSB in the course of an accident investigation

- Perform all functions in compliance with DOT agency regulations
- Retain all verified non-negative drug test results for a minimum of five years

## 4. Substance Abuse Professional (SAP)

### QUALIFICATIONS

The Substance Abuse Professional (SAP) is to be a:

- Licensed physician (Doctor of Medicine or Osteopathy), or
- Licensed or certified psychologist, or
- Licensed or certified social worker, or
- Licensed or certified employee assistance professional, or
- Alcohol and drug abuse counselor certified by the National Association of Alcoholism and Drug Abuse (NAADAC) or by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc. (ICRC/AODA).

All SAPs who provide services must have knowledge of, and clinical experience in, the diagnosis and treatment of substance abuse-related disorders. The SAP is to be well informed about Part 40, the rules pertaining to the DOT Operating Administrations (FMCSA, RSPA etc.) that are applicable to the employer for whom he/she is performing SAP functions, as well as the SAP guidelines and any significant changes to them.

The SAP only becomes involved with your program when an individual violates the prohibitions and he/she goes through the return-to-duty process as your employee. If the individual is terminated, he/she still needs to go through the return-to-duty process, however, not through your program.

### FUNCTIONS

The following is a listing of the activities that the SAP performs:

- **Initial Evaluation** – The SAP's fundamental responsibility is to provide a comprehensive assessment and clinical face-to-face evaluation to determine what assistance the employee may need as a result of a: confirmed positive alcohol and/or verified positive drug test result, refusal-to-submit, or violation of another prohibition. Provides a written report to the DAPM/DER.
- **Education and/or Treatment** – The SAP determines the course of assistance that is appropriate for each individual that he/she evaluates. He/she recommends the best course of assistance, whether it be in-patient or outpatient treatment, and/or educational programs. The SAP serves as the referral source to assist the individual's entry into an acceptable program.



- **Follow-up Evaluation** – Furnished with information from education and/or treatment provider, a follow-up face-to-face interview is required to discuss the individual's effort and behavioral changes. The SAP determines if the individual has demonstrated successful compliance or not. Provides a written report to the DAPM/DER. If the report states successful compliance, the DAPM/DER may have the individual take his/her return-to-duty test.
- **Follow-up Testing Plan** – The SAP provides the DAPM/DER with the number and frequency of follow-up tests that the individual is to complete. (Minimum of six tests in the twelve month period following the individual's return to safety-sensitive duties.)
- **Modifying/Terminating** – Only the SAP can modify and/or terminate his/her own recommendation and/or follow-up plan. The individual is released from the follow-up plan after five years if the SAP has not already released the individual.
- **Record Maintenance** – The SAP is to maintain records of the evaluation, follow-up schedule, and treatment recommendations. An employee, upon request, may obtain a copy of the SAP reports, excluding the follow-up testing schedule.

## 5. Consortium/Third Party Administrator (C/TPA)

Your drug and alcohol program provider is Foley Carrier Services, LLC. of Hartford, Connecticut. We are a third-party administrator (C/TPA) and under the DOT drug and alcohol testing regulations we are considered a "service agent." We, as your service agent are not allowed to act as your Designated Employer Representative (DAPM/DER).

Foley Carrier Services, LLC. offers the following comprehensive products and services:

- Full Service, turn-key DOT Programs to meet FMCSA, FTA, PHMSA, FAA, & USCG Requirements
- Controlled Substances and Alcohol Policy and Educational Materials that meet 49 CFR Part 382.601 Requirements
- Supervisor Reasonable-Suspicion Training Program (on-site training or our self-guided video plus training materials)
- Drug and Alcohol Program Manual, Forms, etc.
- 24-Hour Emergency Telephone Support
- Random Employee Selection and Management Notification
- Program Management Services
- Drivers' Program Coverage Identification Cards
- Local Collection Sites and Nationwide Coverage for Additional Sites
- 24-Hour, 7-Day Post-Accident and Reasonable-Suspicion Guidance, Collection and Testing
- HHS Certified Laboratory Controlled Substances Testing
- Trained Breath Alcohol Technicians to Conduct Alcohol Testing
- Medical Review Officer Review of Positive and Negative Controlled Substances Test Results
- Substance Abuse Professional Services
- Consulting
- Custom Controlled Substances and Alcohol Policy Video Training for Collectors and Collector Trainers
- Driver Background Research
- Driver Log Verification
- Driver Qualification File Assistance

## I-C. General Program Management

*This section covers the overall management of the program.*

### Subjects covered in Section I-C are:

1. Who Needs To Be In This Program
2. When A Driver Has Multiple Employers
3. Multiple DOT Operating Agencies
4. Driver Cards
5. Maintaining Confidentiality
6. Releasing Confidential Information
7. The Controlled Substances and Alcohol Inquiry
8. Responding To A Controlled Substances And Alcohol Inquiry
9. Other DOT-Authorized Provisions

### 1. Who Needs to be in This Program

This regulation requirement applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any state, and are subject to:

- The commercial driver's license requirements of 49 CFR Part 383;
- The commercial driver's license requirements of the Canadian National Safety Code; or
- The Licencia Federal de Conductor (Mexico) requirements.
- This includes an employer who employs himself/herself as a driver.

- Exceptions apply to employers and their drivers who are:
- Required to comply with the alcohol and/or controlled substances testing requirements of Part 655 (FTA)
- Waived by a State to include:
  - Active duty military personnel, members of the reserves or national guard
  - Operators of a farm vehicle, if it meets the exemption requirements
  - Firefighters or other persons who operate CMVs which are necessary for the preservation of life or property or the execution of emergency governmental functions, and meet the exemption requirements

## 2. When a Driver has Multiple Employers

There are times when a driver will be working for two or more employers at the same time. In that situation, in whose random program must the driver be included?

The rules establish an employer-based testing program. In every case it is the employer who remains responsible for meeting random testing requirements. DOT interpretations state that the driver needs to be in a program for each employer.

“The Driver must be in the pool of each employer for which the driver works.” US DOT Interpretations – May 4, 1997

### THE EXCEPTION

There is an exception rule that allows you to be compliant while not having that driver in your program. If you have a driver who works primarily for another employer and you use the driver only occasionally you may use that employer’s program to satisfy your requirements and not list that individual in your program by using the “exception” to this requirement.

To exercise the exception, you must have an agreement with the other employer to make “the other employer’s program” your own. This entails a written agreement with releases by the affected individuals, a copy of the other employer’s policy, a copy of all drug and alcohol test results of the affected individuals, etc. It is important to note that this agreement does not preclude you from your regulatory requirements.

You would:

- Be held responsible for the other program’s compliance
- Need to ensure that all drug and alcohol records could be forwarded to your principal place of business on two day’s notice, and
- Need to guarantee that you would receive notification of any violation of the prohibitions affecting your driver and be assured that this other employer would act upon them.

Considering all that is required of you, it is probably more feasible and cost effective to have the occasional driver placed in your program, thus negating the need to require cooperation from another employer.

**Our Recommendation:** Enroll the affected driver in your program.

## 3. Multiple DOT Operating Agencies

There are occasions when an employer is subject to the rules of multiple DOT agencies. A driver may also be subject to multiple DOT agency rules.

### EMPLOYER

An employer who is subject to the rules of more than one DOT operating agency must have the applicable programs in place for those affected safety-sensitive employees. Example: Employer is subject to FMCSA and PHMSA requirements. Employer would require policies (plans) that are applicable to each agency and the affected individuals would need to be in the appropriate random selection pools.

### EMPLOYEE

If an individual performs safety-sensitive functions for two DOT operating agencies (e.g., FMCSA and PHMSA – the individual drives a covered CMV to the job site where he works on the pipeline), he/she is to be provided with information regarding the requirements of each operating agency since the agencies have some different requirements (e.g., post-accident testing requirements and percentages for random selection). For random selection purposes, the individual is subject to the rates of the operating agency that regulates more than fifty percent of his/her duties.

## 4. Driver Cards

Foley Carrier Services, LLC. provides FMCSA clients with drivers’ cards that are to be given to your enrolled employees who are subject to the DOT drug and alcohol testing requirements. The card should be kept in the driver’s wallet along with his/her CDL license and Medical Card.

Each driver should have a current driver’s card. If an individual, who is expected to drive, or be available to drive a CMV, does not have a current driver card, contact Foley Carrier Services, LLC. to resolve the problem.

## 5. Maintaining Confidentiality

The regulations governing the DOT drug and alcohol testing program require that all parties involved are to maintain a high level of confidentiality with regard to an individual’s drug and/or alcohol test results as well as any associated reports or information.

You must keep all documentation relating to an individual’s drug and/or alcohol testing in a secure area that is not accessible to anyone who does not have a need to know about such information.



**Note:** Under no circumstances should an employee see the drug or alcohol test results of another employee or be aware of the results. Comments like “well, we had a positive test this week” could violate an individual’s right to privacy since it could be generally known who was selected for a test. If anyone is talking about another individual’s positive test result (or other confidential information), they should be advised that the information is confidential and you should take steps to terminate discussions on that subject.

If an individual tells other individuals in your organization that he/she had a positive test result (or other confidential information), and you become aware of the fact that the individual “self-published” this otherwise confidential information, you should document that fact and put it in the individual’s confidential file. He/she at a later date may accuse you of releasing his/her confidential information when in fact the affected individual breached his/her own confidentiality.

In no case should any test result for alcohol or drugs be used to infer that a person is an alcoholic or drug addict.

Foley Carrier Services’ MRO will provide and maintain drug test results according to regulation requirements. Any test results that are forwarded to an employer from Foley Carrier Services are sent in a confidential manner to the DAPM/DER. There is no MRO review of an alcohol test result. It is the employer’s responsibility to audit the result as it is transmitted from the Breath Alcohol Technician (BAT).

Foley Carrier Services, LLC. requests that a copy of the alcohol test result be sent to Foley Carrier Services, LLC. so that we can document the result in our system to fulfill random testing requirements, as well as to provide you with a centralized location for all test results.

**IMPORTANT!** All drug and alcohol test results must be kept confidential, in a secure location, separate from personnel records. This information should not be disclosed except under specific circumstances. Even if you terminate an individual for a positive substance test result, no individual should be privy to the fact that the action was related to a substance abuse/misuse problem, unless he/she has a direct need to know.

The statistical summary reports must also be stored in this confidential manner. Statistical Summaries are provided to you twice a year (January and June) for MIS reporting purposes.

**Our Recommendation:** Set up a confidential filing system

## 6. Releasing Confidential Information

As an employer, you may release information pertaining to an employee’s drug or alcohol test result without the employee’s consent in certain legal proceedings. These proceedings include the following actions that were brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal-to-test (including

but not limited to, adulterated or substituted test results:

- A lawsuit – e.g., a wrongful discharge action
- A grievance – e.g., an arbitration concerning disciplinary action taken by the employer
- An administrative proceeding – e.g., an unemployment compensation hearing

These proceedings can also include a criminal or civil action resulting from an employee’s performance of safety-sensitive duties, in which a court determines that the drug and/or alcohol test information is relevant to the case and issues an order directing the employer to produce the information.

This information can only be released with a binding stipulation that the decision maker will make it available only to parties to the proceeding.

## 7. The Controlled Substances and Alcohol Inquiry

When you hire a driver, you are required to perform an inquiry of all prior employers that the driver has had within the past two\* years. You will be requesting information about any drug and alcohol violations that the driver may have had, and whether or not he/she has any portion of the return-to-duty process to complete.

Conducting the inquiry is discussed in detail in Section I-F. HIRING A DRIVER.

\*49 CFR Part 391 Driver Qualifications – requires that this Inquiry cover a three year period. Part 40 was not revised to reflect this change since there are circumstances when individuals are not subject to Part 391, yet are subject to Part 40. [Example: Municipalities, per Federal requirements do not need to maintain Driver Qualification Files under 391.]”

## 8. Responding to a Controlled Substances and Alcohol Inquiry

As a prior employer from whom information is being requested, you must, after reviewing the employee’s specific written consent, immediately release the information to the employer making the request. All DOT operating agencies must comply with this requirement per 49 CFR Part 40.

You are required to:

- Respond in any written form (e.g. fax, letter, e-mail) that ensures confidentiality.
- Maintain a written record of the information that you released. Include the date, the party to whom it was released, and a summary of the information provided.

### PROPER AUTHORIZATION

As a prior employer, you cannot release this required information to a prospective employer without proper authori-

zation from the driver.

Proper Authorization means that the prospective employer has provided you with the former driver's specific written authorization to release the requested information. Blanket authorizations are strictly forbidden – do not release information based on a request that does not clearly indicate your company name as the respondent.

**Our Recommendation** - Obtain from the requesting Employer, a form with the driver's original signature. Disclosure is permitted only as expressly authorized by the terms of the driver's request.

## REPLYING TO THE REQUEST

As the prior employer, if the prospective employer has not provided you with a form on which to reply, you may use Form DAT-15, DRIVER'S VIOLATION HISTORY to respond to the request.

**Note:** You must make absolutely certain that the individual requesting the information is the individual who has been so designated on the release of information form. For example, if this individual calls you after you have received the form, you should not provide this information over the telephone (or fax, etc.) unless you reach him or her at the telephone number (or fax) machine listed on the driver release form. One way to verify this is to make a return call to the company at the telephone number listed. A better way is to send the information in a confidential manner to the company at the designated address.

## DOCUMENTATION REQUIREMENTS

- Maintain a copy of the request
- Maintain in your files a written record of:
  - The date of your response
  - The party to whom it was released
  - The actual information released.

## NON-FEDERAL TEST INFORMATION

**IMPORTANT!** Do not report any non-Federal drug and/or alcohol positive test results that you may have on file for a driver when responding to a Prior Employer Inquiry. This means that if you have a verified positive drug test result or confirmed positive alcohol test result that was performed under the authority of your Company Policy, not federal re-

quirements, that result cannot be reported. This rule also applies to refusal-to-submit (including those results due to adulteration or substitution). These tests would NOT be reported as part of the required background inquiry.

Example: In a state that does not have restrictions on post-accident testing, an Employer states in its policy that any employee involved in an accident while operating a company vehicle is required to have post-accident drug and alcohol testing. If the accident did not meet the DOT post-accident testing requirements, Employer would have non-Federal drug and alcohol test(s) conducted and the result(s) would be reported as DFW Post-Accident test(s).

The required inquiry specifically asks for information that an Employer would maintain for DOT-mandated record retention.

## 9. Other DOT-Authorized Provisions

### STAND-DOWN

In the revision of Part 40 issued December 19, 2000, an employer can apply for a written waiver from their applicable DOT agency (FMSCA, FAA, etc.), to issue a "stand down" (40.21). A stand down allows the employer to remove an employee from safety-sensitive functions before the MRO verification process has been completed

You, as an employer, are prohibited from standing employees down unless you have applied for and received a written waiver granted to you by the FMCSA. The DOT feels that an individual has the right to the due process of the drug verification procedure, and that right should not be waived. However, the DOT also acknowledges that there are cases when "if the employer knew" that a safety-sensitive individual had a laboratory confirmed positive and the MRO was trying to contact the individual, he (employer) may not have had that individual continue with his/her safety-sensitive duties. Example: Airline pilot has a confirmed cocaine test result – the airline would more than likely not want that individual taking his/her scheduled flight merely because the pilot had not returned the MRO's call yet and therefore the MRO could not verify the result and report that verified result to the employer.

Should you feel you have the need to apply to the FMCSA for a stand-down waiver, please call Foley Carrier Services, LLC. for guidance with the application process.

## I-D. Setting Up and Maintaining a Confidential Filing System

Although your regulatory requirements are for maintaining data only, we recommend a filing system for this data since it significantly improves your ability to audit your information.

### Subjects covered in Section I-D are:

1. Confidential Driver File
2. Confidential DAPM/DER File
3. Record Retention
4. Management Information Systems (MIS)
5. Instructions for Completing MIS Form DAT-9S

With a simplified filing system, at any given time you can easily examine individual files to see that all required forms are present. Should you be audited and need to provide documentation back one year all of your information will be in place, saving you time and frustration.

Our Recommendation: A CONFIDENTIAL DRIVER FILE for each employee and a CONFIDENTIAL DAPM/DER FILE for information that you receive from Foley Carrier Services, LLC. that needs to be maintained.

### 1. Confidential Driver File

You should have the following items enclosed in each driver's file:

- Pre-employment Application (copies, if you keep the original in the individual's Personnel File or Driver Qualification File)
- FORM DAT-2, INQUIRY FOR ALCOHOL AND CONTROLLED SUBSTANCES INFORMATION FROM PREVIOUS EMPLOYER (required for new hires into a safety-sensitive function)
- The written record of the information received from the prior employer drug and alcohol inquiry – or the record of the attempts to receive this information
- FORM DAT-3, APPLICANT CERTIFICATION STATEMENT (requested for new hires into a safety-sensitive position)
- FORM DAT-4, ACKNOWLEDGMENT OF RECEIPT AND REVIEW OF EMPLOYER'S CONTROLLED SUBSTANCES AND ALCOHOL POLICY AND TRAINING MATERIALS (required)
- FORM DAT-5, SUPERVISOR REASONABLE-SUSPICION TRAINING CERTIFICATE (required if individual is a supervisor of drivers)
- Controlled substances test results/Verification Statements – Foley Carrier Services will provide MRO Verification Statements for each controlled substances test performed. (Call Foley Carrier Services, LLC. if you don't have at least one test result on file for each

driver.)

- FORM DAT-11A, CONTROLLED SUBSTANCES AND/OR ALCOHOL TEST COLLECTION TRACKING FORM (if you completed this form upon notifying an individual to go for testing)
- Alcohol test results
- FORM DAT-6, REASONABLE-SUSPICION RECORDING FORM (required - if any reasonable-suspicion tests were conducted)
- FORM DAT-12, FAILURE TO COMPLETE FEDERAL POST-ACCIDENT OR REASONABLE-SUSPICION CONTROLLED SUBSTANCES AND/OR ALCOHOL TESTING (required - if applicable)
- FORM DAT-15, DRIVER'S VIOLATION HISTORY (requested - if applicable)

**Suggestion:** Keep all current individuals in one section, and all terminated individuals in another. Verify that all required forms are present.

### 2. Confidential DAPM/DER File

There are various reports and notifications that will transfer between you and Foley Carrier Services, LLC. In this section we identify some of the most common communiqués that are part of your general program management that should be maintained in your CONFIDENTIAL DAPM/DER FILE. We have noted the name and number of any form that is applicable to the specific activity.

#### ADDING/DELETING EMPLOYEES

It is very important that you advise Foley Carrier Services, LLC. when safety-sensitive Individuals are added to or deleted from your random testing program. You will receive a driver's card for each individual who is added to the program for random selection. We recommend that you file a copy of the add/delete requests that you send us since auditors will often ask when we were notified to add a specific individual.

- FORM DAT-7, ADDITIONS OR DELETIONS TO DRIVER LIST FOR DOT DRUG AND ALCOHOL TESTING PROGRAM

#### SUPERVISOR REASONABLE-SUSPICION TRAINING

In addition to keeping a supervisor's training certificate in that supervisor's file, place a copy of the training certificate in this file. You may need to document this information on your annual summary, and it is easier and less time-consuming to retrieve it from one central file at the end of each year.

- FORM DAT-5 SUPERVISOR REASONABLE-SUSPICION TRAINING CERTIFICATE

## STATISTICAL SUMMARIES

The testing laboratories are required to transmit to employers on a semi-annual basis an aggregate (total) summary of that employer's drug testing. The DOT requires that this summary not reveal the identity of any employee and has implemented safeguards to ensure that this does not happen.

To avoid providing data to an employer from which it is likely that someone could readily infer information about an employee's test result, the laboratories will not provide a summary if the total number of tests at any given laboratory for that employer is fewer than five.

This prevents a laboratory from providing you with information about a confirmed positive result that you previously had no knowledge about since it was verified negative by the MRO (e.g., valid medical prescription). If there were only one or two tests conducted during that period of time, it would be fairly easy to deduce who the donor of the confirmed positive was. This could breach an individual's right to privacy.

**If you need a Summary Report** - Should you have an audit, inspection, or review by a DOT agency, you may need to request a summary if you have not received one because your aggregate number of tests at a lab was under five. In that case you will receive a report that indicates that not enough testing was conducted to warrant a summary.

## RANDOM SELECTION NOTIFICATIONS

File all random selection notifications you receive from Foley Carrier Services, LLC.

## 3. Record Retention

The regulations require that you maintain certain documentation for a specific amount of time.

### FIVE YEARS

- Alcohol test result that is 0.02AC or greater
- Positive drug test result(s)
- Documentation of refusals to take a required drug and/or alcohol test (includes refusal-to-submit due to adulteration/substitution)
- Driver evaluation and referrals
- Records relating to the administration of the drug and alcohol testing program
- Copy of each calendar year summary (DAT-9S) (382.403)

### TWO YEARS

- Records relating to the drug and alcohol collection process (the employer copy of the CCF)

## ONE YEAR

- Negative and cancelled drug test results and alcohol test results that are less than 0.02AC.

## INDEFINITE PERIOD

- Records relating to the training of supervisors and drivers shall be maintained by the employer while the individual performs the functions that require the training and for two years after ceasing to perform those functions.

## 4. Management Information Systems (MIS)

Under the MIS rules, SUMMARY records are subject to Federal audit by mail. The FMCSA randomly selects a sample of employers in January who will be required to submit, by March 15th, their previous year's records to the FMCSA for review, compliance and effectiveness.

If selected, you must ensure that the report is accurately prepared and returned to the FMCSA as directed. As a client of Foley Carrier Services, LLC., you will receive the MIS form at the beginning of the year reflecting the data that we had for your prior year's program. Upon receipt of this report, you need to review it and ensure that it is complete. There may be items that we will not have data for that you will need to complete.

**Important Note:** All Federal drug tests reported by Foley Carrier Services, LLC. will be included in the MIS report when you have used the appropriate CCFs that we provided to you. Using our CCFs ensure that your testing records are accurate and complete.

Alcohol test results may not be included if Foley Carrier Services, LLC. was not informed of the test result from the BAT or from you as the DER.

Maintain this report on file.

On the Policy and Manual CD, we have provided you with a blank MIS form should you need to add or change information.

- FORM DAT-9S, US DOT DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

## 5. Instructions for Completing MIS Form DAT-9S

**Important Note for Employers who are subject to the regulations of more than one DOT Operating Agency:**

- You will need to submit separate MIS forms for each Operating Agency
- If you have employees, some of whom perform duties under one DOT agency and others of whom perform duties under another DOT agency, you will need to complete different MIS forms for each operating agency. Complete all information for the DOT agency that you are submitting the MIS form to.
- If you have employees who perform multi-DOT functions (e.g., an employee drives a CMV AND performs



pipeline maintenance for you), you would count the employee only on the MIS report for the DOT agency regulating more than 50% of the employee's safety-sensitive function.

## **SECTION I. EMPLOYER:**

Complete the requested information.

- **Name of Certifying Official:** Although Foley Carrier Services, LLC. will partially prepare the MIS Data Form, you would enter the name of the company official who is certifying the accuracy of the completed report on this line.
- **Prepared by (if different):** If someone other than the certifying official completed the MIS form, enter that person's and phone number on the appropriate lines provided.
- **C/TPA Name and Telephone (if applicable):** Foley Carrier Services, LLC., (800) 253-5506
- **Check the DOT Agency:** If our records indicate that you need to submit MIS reports to multiple DOT agencies, we will provide you with the separate forms for each agency. You will need to ensure that the appropriate number of covered employees is being reported on each MIS form.
- **FMCSA:** Enter your DOT number; Indicate whether or not you are an owner/operator; and whether you are exempt from filing MIS (exemptions noted at 382.103(d))
- **PHMSA:** If completing the form for PHMSA, check the additional box(s) indicating your type of operation.

## **SECTION II. COVERED EMPLOYEES**

- **(A):** Enter the average number of covered employees who work for your company.
  - Foley Carrier Services, LLC. provides you with an employee list each quarter. You are to review this list, make any appropriate changes and get it back to us since we use that listing of employees when conducting the quarterly Random Selections.
  - Calculate the average number of employees by adding the total number of covered employees subject to random testing during EACH random selection period and then dividing by four (since FSI conducts quarterly selections.)
- **(B):** Enter the total number of employee categories that the average number of covered employees in Box A represents.
  - **FMCSA** – only has one category: Driver – enter the number one.
  - **PHMSA** – only has one category: Operation/Maintenance/Emergency Response – enter the number one.

- **FTA** – has five categories: Revenue Vehicle Operation; Revenue Vehicle and Equipment Maintenance; Revenue Vehicle Control/Dispatch; CDL/Non-Revenue Vehicle; Armed Security Personnel—enter the total number of employee categories that your employee count represents

- **(C):** Enter the name of the employee category for which you are submitting this MIS report. For each employee category you will need to submit a separate MIS report.
  - **Multiple categories** - make copies of the form completed through Section II-B. Example of multiple employee categories: If you have employees, who drive CMVs, perform Pipeline Maintenance, and Pipeline Operations. You will submit separate reports with employee categories for Driver, Pipeline Maintenance and Pipeline Operations.

## **SECTION III. DRUG TESTING DATA**

This section summarizes the drug testing results for all of your covered employees (including applicants that you did not hire) that the MRO reported to you. If you did no testing for a test type, you may leave that column blank or enter zero.

- **Column 1:** Total Number of Test Results - Should equal the sum of Columns 2, 3, 9, 10, 11, and 12. Enter the total number of test results in each testing category during the entire reporting year. Do not include cancelled tests and blind specimens.
- **Column 2:** Total of Verified Negative Test Results – Do not count “negative-dilute” if, subsequently, the donor underwent a second collection; the second test is the test of record.
- **Column 3:** Verified Positive Results for One or More Drugs – Enter the number of tests in each category (test type) that the MRO reported as positive for one or more drugs. A result that was positive for more than one substance counts as one positive test in this column.
- **Columns 4 – 8:** Positive for Specific Drugs – Enter the substances for which each result was positive for that test type. If a result were positive for cocaine and marijuana, you would enter that count under both columns 4 and 5.

There is no expectation for Columns 4 – 8 to add up to the numbers in Column 3 when you report multiple positives.

- **Columns 9 – 12: Refusal Results** – The refusal section is divided into four refusal groups. The MRO reports **Adulterated** (Column 9) and **Substituted** (Column 10) specimen results because of laboratory test findings. A **Shy Bladder – With No Medical Explanation** (Column 11) is reported by the MRO after an individual has not provided enough urine at the collection site and the MRO has conducted, or had



another Doctor conduct, a medical evaluation of the donor and no medical reason was found to support the inability. **Other refusals** (Column 12) would include any occurrences such as interfering with the collection process, leaving the collection site without permission, failing to report to the collection site as directed by the employer, etc.

All refusals are counted as a testing event for MIS purposes. Do not be concerned that a "refusal" resulted in no urine being sent to the laboratory. Column 1 will equal the total of Columns 2, 3, 9, 10, 11, and 12.

- **Column 13: Cancelled Tests** – Enter the number of tests that the MRO reported to you as cancelled. Do not count any cancelled tests in Column 1. This includes any tests that were initially reported as a positive but were ultimately cancelled for any reason (e.g. the split failed to reconfirm).

**TOTAL Line:** This line requires that you add the numbers in each column and provide the totals.

#### **SECTION IV. ALCOHOL TESTING DATA**

This section summarizes the alcohol testing conducted for all of your covered employees (including applicants, if you did pre-employment alcohol testing). If you did no testing for a test type, you may leave that column blank or enter zero.

- **Column 1. Total Number of Screening Test Results** – Enter the number of screening test events with a final screening test result below 0.02, of 0.02 through 0.039, of 0.040 or greater, and all refusals.
- **Column 2. Screening Tests With Results Below 0.02** – Enter the number of tests by test type that the BAT or STT reported as being below 0.02 on the screening test.
- **Column 3. Screening Tests With Results 0.02 or Greater** – Enter the number of tests by test type that the BAT or STT reported as being 0.02 or greater on the screening test.
- **Column 4. Number of Confirmation Test Results** – Enter the number of confirmation tests by test type that were conducted by the BAT as a result of the screening test being 0.02 or greater. Ideally, the number of confirmation tests should equal the

number of screening tests entered in Column 3.

- **Column 5. Confirmation Tests With Results 0.02 Through 0.039** – Enter the number of confirmation tests, by test type, that were 0.02 through 0.039.
- **Column 6. Confirmation Tests With Results 0.04 Or Greater** – Enter the number of confirmation tests, by test type, that were 0.04 or Greater.

There is no place to enter a confirmation test that that is below 0.02. DOT is making the assumption that if a confirmation test was completed but not listed in either Column 5 or 6, the result was below 0.02. Additionally, if the confirmation test ended up being cancelled, it should not have been included in Columns 1, 3 or 4 in the first place.

Column 1 should equal the sum of Columns 2, 3, 7 and 8.

- **Column 7. "Shy Lung" – With No Medical Explanation** – Enter the number of tests in which there was no medical reason to support the employee's inability to provide an adequate breath as reported by the examining physician; subsequently the employer called the test a refusal-to-test.
- **Column 8. Other Refusal-to-Submit to Testing** – Enter any refusals other than those already entered in Column 7. (Include any occurrences such as interfering with the testing process, leaving the collection site without permission, failing to report to the collection site as directed by the employer, etc.)

Even though some testing events result in a refusal in which no breath was tested, there is an expectation that Column 1 will equal the sum of Columns 2, 3, 7 and 8. Do not be concerned that no breath was tested for some refusals; all refusals are counted as a screening test event for MIS purposes and establishing random rates.

- **Column 9. Cancelled Tests** – Enter the number of tests that the BAT or STT reported as cancelled. Do not count any cancelled tests in Column 1 or in any column other than Column 9. (e.g., You are not to enter a screening test of 0.041 in Column 1 if the test was ultimately cancelled for some reason, such as a required air blank was not performed.)

**TOTAL Line. Columns 1 through 9** – Add the numbers in each column and provide the totals.

# I-E. Advanced Guide to Issuing Your Policy

This section discusses the Standard Policy that has been provided to you by Foley Carrier Services, LLC., as well as the steps you need to take to modify your policy and issue it to your drivers.

## Subjects covered in Section I-E are:

1. The Standard Policy
2. Additional Employer Authorized Requirements
3. If No Modifications Are Necessary
4. Modifying Your Policy
5. Employee Training
6. Licensing and Copyright Information

## 1. The Standard Policy

**Foley Carrier Services, LLC.'s Standard Policy** meets the DOT requirements for 49 CFR Parts 382 and 40. The policy allows the employer to take disciplinary actions, up to and including termination, for any violation of the DOT and FMCSA prohibitions or employer's authorized requirements as defined in the policy.

**First-Termination Option** – Our Standard Policy gives the employer the option to terminate a driver after the first violation of the prohibitions. Employers exercising this option need to be mindful not to terminate in a discriminatory manner.

**Second-Chance Option** – Our Standard Policy provides the employer the opportunity to provide the employee with a second chance following a first violation of the prohibitions. If you opt to offer the employee a second chance, the individual would be allowed to complete the return-to-duty process while in your employ. However, he or she would be responsible for the associated costs of completing the return-to-duty process.

The return-to-duty process includes the following required elements:

- **An Initial Substance Abuse Professional (SAP) Evaluation** – To determine what education and/or treatment the individual needs
- **Education and/or Treatment** – Based on the recommendations of the SAP
- **Follow-up Evaluation** – To determine if the driver complied with the SAP's education and/or treatment recommendations
- **Return-to-Duty Testing** – A negative result is required before the individual can return to safety sensitive functions. May be for drugs and/or alcohol
- **Follow-up Testing** – Minimum of six tests within the

first twelve months of returning to safety-sensitive functions

**Driver Responsible for Extra Fees** – Additional fees will be incurred as part of the return-to-duty process. This policy states that these fees, as well as for a few other situations that would result in additional fees, are the responsibility of the individual for whom the services were provided, for any fees that are not covered by employee's insurance, if any. While Return-to-Duty costs may vary, employees should expect to pay as much as \$600 for Substance Abuse Professional (SAP) services and more for all Return-to-Duty and Follow-Up tests.

Additionally billed services would be:

- **Testing of the Split-Specimen** – Employee wishes to have the split specimen tested in an attempt to prove that the original positive test result or refusal-to-submit due to adulteration or substitution was a laboratory error. If the test does not reconfirm the original result, the employee is returned to duty without any adverse actions. (If employee is on an unpaid leave of absence, employer should issue back pay for the failure to reconfirm.)
- **A medical evaluation** that the MRO or employer requests for the purpose of establishing if there is a medically valid reason for an individual's inability to provide an adequate urine or breath specimen.

**Note:** As a client of Foley Carrier Services, LLC. it is important to remember that you, as our client are billed for any fees associated with the drug and alcohol testing program. If your driver incurs additional fees, it is your responsibility to collect those fees from that driver.

## 2. Additional Employer Authorized Requirements

These requirements, which benefit the employer, have been added to Foley Carrier Services, LLC.'s Standard Policy. Please review them to ensure that they each meet your requirements. Refer to Modifying Your Policy in this section to assist you in making any modifications.

### NEGATIVE-DILUTE DRUG TEST RESULT

Requires that a driver who provides a negative-dilute specimen for a pre-employment, return-to-duty, or follow-up test submit to a second specimen collection.

**Note:** "This employer authorized requirement may be edited to include additional test types (Reasonable-Suspicion, Random or Post-Accident). We did not include them since there would be no advanced notice of testing (there

is for PE and RTD) and therefore an individual would probably not have hydrated himself/herself in preparation for the test.

Once you have decided on the test types, you must request a recollection from all individuals with a negative-dilute specimen for the test types you have chosen.

If the MRO reports a negative-dilute with a recollection required under direct observation, you must follow that instruction. That requirement is not related to this employer authorized negative-dilute issue.”

### **TRANSPORTATION AFTER REASONABLE-SUSPICION TESTING**

A driver brought for a reasonable-suspicion controlled substances test or a reasonable-suspicion alcohol test with a test result of 0.02AC or greater will be required to accept employer-arranged transportation, or arrange for independent transportation home, whichever is acceptable to employer. Refusal to accept independent transportation may result in disciplinary actions, up to and including, immediate termination.

### **COOPERATION**

A driver is required to fully cooperate with the SAP or the MRO including, but not limited to, meeting any required education and/or treatment, whether in-patient or out-patient. Failure to cooperate fully may result in disciplinary action up to and including termination.

### **TIME LIMITS**

We placed time limits for a driver to complete successful return-to-duty testing. Once the driver is told by the DAPM/DER to have the return-to-duty testing conducted, it must be done within the following time frame:

- Alcohol, Opiates, Cocaine, Phencyclidine, Amphetamines 5 Days
- Marijuana 40 Days

Failure to have the testing completed within these time frames may result in disciplinary action up to and including termination.

### **CONVICTION OF A FELONY**

States that a driver who has been convicted of a felony involving the possession of, or a transaction in, illegal controlled substances (regardless of where the unlawful activities took place) is subject to disciplinary action, up to and including dismissal.

### **EMPLOYER NOTIFICATION**

Requires any driver who has had an occurrence of any of the Other DOT Requirements or Prohibitions to notify employer of such occurrence within 24 hours.

### **ADMINISTRATIVE ACTION FOR ALCOHOL TEST RESULT >0.02 BUT <0.04**

If a driver is removed from safety-sensitive duties for one

shift due to an AC of 0.02 or greater, but less than 0.04, if employer determines that no appropriate non-safety-sensitive work is available, the driver will be placed on an unpaid leave of absence and may be required to discuss the situation with a SAP.

## **3. If No Modifications are Necessary**

If all of the employer authorized requirements and consequences of our Standard Policy are acceptable to you, you are basically ready to issue the policy. Please feel free to have your attorney review the policy.

### **IDENTIFY YOUR DAPM/DER**

Write/type the name of your Drug and Alcohol Program Manager (DAPM) or the Designated Employer Representative (DER) on the cover of the policy. This is the individual that your drivers will be told to contact should they have questions or concerns about the drug and alcohol testing program.

Refer to Section I-B (2): DRUG AND ALCOHOL PROGRAM MANAGER/DESIGNATED EMPLOYER REPRESENTATIVE (DAPM/DER) for the responsibilities of this position.

### **COMPANY NAME**

You may add your company name to the cover page. It is important that you retain our copyright information.

### **DUPLICATION**

You have permission to reproduce this copyrighted material, as required, for your internal purposes as long as you are a client in good standing and retain the copyright and licensing information. See LICENSING AND COPYRIGHT INFORMATION section below.

## **4. Modifying Your Policy**

Review our Standard Policy to determine if you need to make any changes. We separated the sections to enable you to easily make any changes that would best suit your needs while providing a level of security to help prevent an inadvertent change to a regulatory requirement.

The required policy and educational materials are highly regulated per 49 CFR Part 382.601. Hundreds of hours of work have gone into our policy and the words have been carefully chosen to reflect the regulations correctly. Please feel free to have your attorney review the policy.

We recommend that you make changes only to the following sections:

- Section IX. Employer’s Independently Authorized Consequences and Requirements
- Section X. Employer’s Independently Authorized Financial Responsibilities

If you have questions, we will provide limited policy consultation over the phone without charge. We can also provide a limited policy review of the pages that you have

modified at no additional charge. If you would like us to review your changes, simply follow the Guidelines for a No-Charge Policy Review, outlined below.

Should you require more substantial modifications, please contact us. A more comprehensive evaluation will be billed on a time and materials basis if you require assistance.

#### **GUIDELINES FOR A NO-CHARGE POLICY REVIEW**

- Make a copy of the page(s) of the policy you wish to modify.
- Draw a line through items you wish to delete.
- Insert your modifications and additions on the printed copy, if possible, otherwise, indicate by a letter code or other method where the inserted item will go and separately list insertions and modifications.
- Fax your modified pages to: (860) 913-2454 or Mail your modified policy to: Foley Carrier Services, LLC., Attention: Policy Review, 140 Huyshope Avenue, Hartford, CT 06106
- We will respond by telephone or by mail with the results of our review.

#### **5. Employee Training**

As required by regulation, employees and contractors must have proper notification of the policy and other information. Our policy and educational materials (which is a combined package) meet this technical requirement. After the drivers review the policy and educational materials, they will need to complete:

- FORM DAT-4, ACKNOWLEDGMENT OF RECEIPT AND REVIEW OF THE DOT CONTROLLED SUBSTANCES AND ALCOHOL POLICY FOR DRIVERS AND EDUCATION MATERIALS. – DOT Regulations require the safety-sensitive individual to sign a statement certifying that he/she has received a copy of the materials that an employer is required to provide. Maintain this statement (form) in the employee's confidential file folder.

The policy and educational materials may not completely meet your business needs since your drivers may have

significant questions. Some form of training is essential for your drivers to understand the requirements of the regulations.

#### **6. Licensing and Copyright Information**

The Drug and Alcohol Policy and the Program Manual (including forms) are licensed products. A client in good standing has use of the manual, forms, and selected policy as outlined below. We are very protective of our valuable intellectual property and your cooperation in this matter is very important.

##### **DUPLICATION**

Client is licensed to duplicate and use for internal purposes only, the copyrighted contents of the Drug and Alcohol Program Manual as long as client is a customer in good standing with Foley Carrier Services, LLC. No video or audio duplication is permitted.

##### **DERIVATIVE WORK**

Any work derived from our materials must maintain all copyright information on every page. In addition, a client in good standing may use the copyrighted items to derive products for internal purposes only.

##### **ADDITIONAL WORK**

Should there be pages added to the policy that are solely the property of the employer, our copyright information is not required on such pages.

##### **UPON PROGRAM TERMINATION**

Should an employer's program with Foley Carrier Services, LLC. be terminated for any reason, the former client may not use The Drug and Alcohol Program Manual (including forms), any Policy, and/or any derivatives thereof, any Custody and Control forms with our MRO information.

##### **EXCEPTIONS**

An employer may continue to use products that are sold as stand-alone items. Examples are: Reasonable-Suspicion Drug & Alcohol Testing Training for Supervisors (manual & video), or any other such items that are copyrighted materials yet are available for sale to non-clients.

## I-F. Hiring a Driver

This section covers the steps required to place an individual in a safety-sensitive position. In this section the information pertains to non-testing activities for new hires, transfers, and could be applicable when a driver returns from lay-off/leave. The actual testing activities are covered in Section II CONTROLLED SUBSTANCES AND ALCOHOL TESTING.

### Subjects covered in Section I-F are:

1. Job Offer Contingency
2. Applicant Notification of DOT Requirements
3. Performance Review – Driving Test
4. Have Appropriate Forms Completed
5. Pre-Employment Testing
6. Controlled Substances and Alcohol Inquiry
7. Performing the Controlled Substances and Alcohol Inquiry
8. Notify Foley Carrier Services, LLC
9. Driver Returns From Lay-off/Leave

It is important that you complete all of the required items listed below when you hire or transfer an employee into a safety-sensitive position as defined in the DEFINITIONS section of the policy. For your convenience we have included a HIRING A DRIVER CHECKLIST in the Appendix section of this manual.

**Note:** Mechanics who road test CMVs as well as casual drivers, sub-contractors, etc. are included in this requirement. Remind your personnel staff to notify you when a driver is being hired or transferred into a safety-sensitive position. Failure to perform required pre-employment steps has a potential fine of \$10,000 per instance.

Follow these steps to ensure that all requirements have been completed:

### 1. Job Offer Contingency

Inform the applicant/transfer in advance that a job offer is contingent upon a negative drug test result (and an alcohol test, if applicable – See Pre-Employment Testing, below).

### 2. Applicant Notification of DOT Requirements

It is important that the driver be aware of consequences that he/she is subject to should he/she violate the drug and alcohol testing rules. 49 CFR Part 40 requires an individual who violates the prohibitions to comply with the return-to-duty process before beginning safety-sensitive functions for any employer. The driver applicant needs to know this. On the Policy and Manual CD, we have included DAT-21 APPLICANT NOTIFICATION. This short synopsis informs the applicant/transfer of consequences

of a violation of the prohibitions that could occur during, or as a result of pre-employment testing. By providing this one page document to the applicant/transfer, you can provide the individual with necessary information while saving yourself time and the expense of providing the entire policy.

However, if you prefer, you may make a copy of The Controlled Substances and Alcohol Policy for Drivers available for review to an applicant/transfer whom you are seriously considering for a position. You could then issue the policy upon hiring the individual.

### 3. Performance Review – Driving Test

You may conduct a supervised driving performance review of an applicant/transfer prior to conducting the pre-employment drug test.

### 4. Have Appropriate Forms Completed

Before sending the applicant/transfer for pre-employment testing, have him/her complete the following forms:

- DAT-21, APPLICANT NOTIFICATION – This form explains the consequences of a positive drug test as well as a refusal-to-submit to a Pre-employment test.
- DAT-2, INQUIRY FOR ALCOHOL AND CONTROLLED SUBSTANCES INFORMATION FROM PREVIOUS EMPLOYER. The applicant must sign one form for each employer he/she worked for within the last two years that is subject to DOT agency requirements.
- DAT-3, APPLICANT/DRIVER CERTIFICATION STATEMENT
- DAT-4, ACKNOWLEDGMENT OF RECEIPT AND REVIEW OF EMPLOYER'S CONTROLLED SUBSTANCES AND ALCOHOL POLICY AND EDUCATIONAL MATERIALS

File these forms in the Confidential File Folder that you have created for the new driver.

### 5. Pre-Employment Testing

When you hire/transfer an individual into a safety-sensitive position, you must have a pre-employment drug test conducted, and a negative drug test result must have been communicated before that individual actually performs safety-sensitive functions (e.g., drives). If this communication is conducted via telephone, it is best to document the date and time that you received the call from personnel in the MRO's office.



Pre-employment alcohol testing is not required, but as of August 1, 2001, it is authorized. If you, as an employer, conduct pre-employment alcohol testing, you must conduct the test on every applicant/transfer for a safety-sensitive position.

To conduct a pre-employment alcohol test, inform the individual of this requirement and inform the collection site to use a Federal alcohol test form (ATF) and follow all of the testing procedures outlined in the alcohol testing procedures of Part 40.

Arrange (schedule the appointment) for the pre-employment drug test (and alcohol test, if required per your requirements.)

See Section II-I. SENDING AN INDIVIDUAL FOR TESTING.

**NOTE:** If an applicant has a positive pre-employment drug test, or refusal-to-submit this information must be reported in your Management Information Systems (MIS) report (DAT-9S).

Maintain this information in your confidential file.

## 6. Controlled Substances and Alcohol Inquiry

We recommend that you start the required inquiry for an applicant/transfer as part of the application process. It is important to begin this as soon as possible because you need the results on file within 30 days of the individual's first day of performing safety-sensitive functions.

## 7. Performing the Controlled Substances and Alcohol Inquiry

This requirement was implemented to allow you, as an employer, to find out if your applicant has had any violations of the drug and alcohol prohibitions. As a DOT-regulated employer of a new driver, you are required to perform this inquiry of the employers for whom the driver worked within the past three years of the date of his/her application for employment with you.

This activity is required only when an applicant/transfer is seeking to begin safety-sensitive duties for you for the first time. There are specific guidelines that must be adhered to in completing this inquiry.

### PROVIDE PROPER AUTHORIZATION

You must provide the prior employer with the proper authorization in order for them to release the requested information. Use Form DAT-2 INQUIRY FOR ALCOHOL AND CONTROLLED SUBSTANCES INFORMATION FROM PREVIOUS EMPLOYER.

The request must be:

- Made of every employer that the driver had within the past two years.
- Specific to that employer. Their business name is to be listed as the employer from whom you are requesting

the information. Blanket releases are prohibited.

- Specific in the information that you are requesting. You are seeking information about:
  - Positive drug test results,
  - Refusals to Submit (including adulterated or substituted tests)
  - Alcohol test results greater than 0.04AC
  - Other violation of DOT agency drug and alcohol testing regulations

### COMPLETE DRUG AND ALCOHOL INQUIRY WITHIN 30 DAYS

When you initiate your request, we suggest that you send it via a means that provides you with documentation that the request was received (e.g., fax, email or certified mail). If the prior employer does not respond to your inquiry, you need to attempt to contact that employer. You are required to make and document a good faith effort to get this information.

If you have not received a response within thirty (30) days, from the date the individual began safety-sensitive functions, you need to remove the individual from those duties until the information is received unless you have made a good-faith effort to obtain the information from the previous employer. Be sure to document all attempts to obtain the information.

### ASK THE DRIVER

You must ASK the employee whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test (within the past two years) administered by an employer to which he/she applied for, but did not obtain, a safety-sensitive position.

### IF THE INQUIRY RESULTS INDICATE, OR THE DRIVER INDICATES, A PRIOR DRUG OR ALCOHOL VIOLATION

If a prior employer informs you that an applicant violated the prohibitions or if the employee admits to a positive or refusal-to-submit, you need to know specific information. You cannot use the employee for safety-sensitive functions, until and unless you have documentation of successful completion of the return-to-duty process. You need to know:

- If the individual was evaluated by a SAP
- If the individual is meeting or has completed his/her treatment or education
- If the follow-up evaluation with the SAP took place
- If a return-to-duty test was performed with a negative result (drugs or alcohol, or both).
- If the individual is meeting, has completed, or is continuing treatment

- If the individual still has follow-up tests to complete
- If the individual has not completed all of the return-to-duty requirements (including follow-up tests) and you wish to employ him/her, refer to Section I-H. RETURN-TO-DUTY PROCESS for more information.

## 8. Notify Foley Carrier Services, LLC.

When you add (or delete) an employee from your DOT random testing program, please notify Foley Carrier Services, LLC. of the change by:

**Fax: (860) 913-2454**

**Phone: (800) 253-5506**

Or Mail using Form DAT-7 to:

**Foley Carrier Services, LLC.**

**140 Huyshope Avenue**

**Hartford, CT 06106**

## 9. Driver Returns From Lay-off/Leave

If you employ a driver who has a seasonal layoff or extended leave, you may want to have the driver certify that he/she did not have a refusal-to-submit (including adulterated/substituted specimen), or a positive drug or alcohol test while he/she was not actively driving for you.

Use Form DAT-3, APPLICANT/DRIVER CERTIFICATION STATEMENT

You may opt to do the Prior Employer Inquiry if the individual was performing safety-sensitive functions for another employer during the lay-off from your employ. If you wish to conduct this activity, be sure the individual completes Form DAT-2. This section covers "The Prohibitions." Each prohibition is listed below. All of the prohibitions refer to "performing safety sensitive functions."

# I-G. The Drug and Alcohol Prohibitions

*In this section we have defined the Drug and Alcohol Program Prohibitions as they apply to 49 CFR Parts 382 and 40.*

### Subjects covered in Section I-G are:

1. Alcohol Concentration
2. On-Duty Use
3. Pre-Duty Use
4. Use Following an Accident
5. Refusal-to-Submit
6. Controlled Substances Use
7. Controlled Substances Testing
8. Actual Knowledge
9. DOT and FMCSA Consequences of a Violation
10. What to do if An Individual Violates the Prohibitions

This section covers "The Prohibitions." Each prohibition is listed below. All of the prohibitions refer to "performing safety sensitive functions." It is important to ensure that your drivers understand this definition. It includes the time that an individual "begins" work or is required to be "in readiness" to work until he/she is relieved from work. (See "safety-sensitive function" in the DEFINITIONS section of the policy)

### 1. 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. (49 CFR Part 382.201)

**Important:** An alcohol concentration greater than or equal to 0.02 but less than 0.04 is NOT a violation of the prohibitions. This lower level of alcohol concentration does not require the individual to complete all of the components of return-to-duty. However, the individual is not allowed to perform safety-sensitive functions until the start of the his/her next regularly scheduled duty period, but not less than 24 hours following the administration of the alcohol test.

No Employer having actual knowledge that a driver has a prohibited alcohol concentration level shall permit the driver to perform or continue to perform safety-sensitive functions.

### 2. On-Duty Use

No driver shall use alcohol while performing safety-sensitive functions. (49 CFR Part 382.205)

For example, a driver cannot consume alcohol while actually driving, waiting for a load, etc. Clearly, a driver cannot have a beer or any other alcoholic beverage during lunch break.

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.

### 3. Pre-Duty Use

No driver shall perform safety-sensitive functions within four hours after using alcohol. (49 CFR Part 382.207)

A problem area is when individuals are on-call. For example if an on-call snowplow driver is contacted to drive and he/she consumed alcohol within the past four hours, he/she cannot report for work (perform safety-sensitive functions) and must disclose this to the individual requesting that he/she come in.

No Employer having actual knowledge that a driver has consumed alcohol within four hours prior to performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

### 4. Use Following an Accident

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. (49 CFR Part 382.209)

### 5. Refusal-to-Submit

No driver shall refuse to submit to a controlled substances or alcohol test. There are many conditions that qualify as a "refusal-to-submit." See Section II-K. REFUSAL-TO-SUBMIT. (49 CFR Parts 40.191, 40.281, and 382.211)

No Employer shall permit a driver who refuses to submit to testing to perform or continue to perform safety-sensitive functions.

### 6. Controlled Substances Use

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substances, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a CMV. (49 CFR Part 382.213)

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

### 7. Controlled Substances Testing

No driver shall report for duty, remain on duty or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. (49 CFR Part 382.215)

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

### 8. Actual Knowledge

"Actual Knowledge," as used in the context of the prohi-

bitions, means that an employer can obtain actual knowledge that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substances use. (Except as provided under 382.219 Employee Admission of alcohol and controlled substances use.) Refer to the Self-Identification Program under Other DOT Authorized Provisions in Section I-C. GENERAL PROGRAM MANAGEMENT)

### 9. DOT and FMCSA Consequences of a Violation

Any violation of these prohibitions (positive test result, refusal-to-submit, drug use, etc.) has the same DOT consequences and requirements for returning to safety-sensitive functions. They include:

- Removal from safety-sensitive duty
- Substance Abuse Professional (SAP) evaluation (face-to-face)
- Compliance with the treatment or education requirements recommended by the SAP
- Follow-up SAP evaluation (face-to-face)
- Negative return-to-duty test result(s)
- Subject to a minimum of six follow-up tests within the twelve-month period following returning to safety sensitive function.

### 10. What to do if an Individual Violates the Prohibitions

Do you terminate the individual or do you allow for a second chance? This decision is to be made before issuing your policy because when the situation occurs you are to follow the employer authorized consequences that your policy has stated.

Our Recommendation: We strongly advise that your consequences for policy violations be the same for all safety-sensitive individuals who violate the requirements of this program.

If your policy states that the individual will be allowed to remain in your employ while completing the return-to-duty process, refer to Section I-H. RETURN-TO-DUTY PROCESS

If your policy states that the individual is to be terminated refer to Section I-I. TERMINATING AN INDIVIDUAL.

### DOCUMENTATION OF ALCOHOL TEST APPLICABILITY

**IMPORTANT!** If the violation was for an alcohol prohibition, you should document the applicability of the alcohol test because an individual may claim well after the test was

conducted that he/she was not subject to an alcohol test. Confirm and document that at the time of the test the individual was subject to testing.

An individual is "subject to testing" if the testing was conducted just before, during, or immediately after, the individual was subject to driving, or available to perform safety sensitive functions.

### **CONFIRMED POSITIVE ALCOHOL TEST RESULT**

The Breath Alcohol Technician (BAT) is required to report any confirmed alcohol test result over 0.02 AC directly to you as the DAPM/DER. You need to immediately remove any individual with a result greater than 0.02 AC from safety-sensitive functions; however a result of greater than 0.02 but less than 0.04 is not a positive alcohol test result. The required return-to-duty process does not apply.

A positive alcohol concentration, according to DOT regulation, is 0.04 or greater. For alcohol testing there is no review process as there is for drug testing (MRO review). This section deals only with alcohol concentrations of 0.04 or greater. For results greater than 0.02 but less than 0.04, refer to the policy sections: DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT and EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES FOR VIOLATIONS OF THIS POLICY.

**IMPORTANT!** Report the name of the individual with a confirmed alcohol test result of 0.04 or greater to Foley Carrier Services, LLC. We will provide you with the name of a Substance Abuse Professional (SAP). You need this information regardless of whether the individual is to con-

tinue to work for you and go through the return-to-duty process or if the individual is terminated.

### **VERIFIED POSITIVE DRUG TEST RESULT**

You must advise the individual who tested positive for drugs of the test result and the substance or substances for which he/she tested positive. The individual will already have been advised of this by the MRO who will also have discussed his/her right to have the split specimen test conducted. In some states you are required to provide the individual with a copy of the positive drug test result.

You must not disregard a verified positive DOT result because the employee presents a negative test result from a blood or urine specimen collected by his/her physician or a DNA test result purporting to question the identity of the DOT specimen.

See Section II-L. TESTING OF THE SPLIT SPECIMEN for important information and guidelines should the individual request that the split be tested.

### **RELEASE OF DRUG/ALCOHOL TESTING INFORMATION**

A driver may request the release of his/her controlled substances and/or alcohol test information to third parties at his/her option. Use Form DAT-16 REQUEST FOR CONTROLLED SUBSTANCES AND/OR ALCOHOL TEST RESULT. Do not release information unless the driver has properly authorized it. This is not to be confused with the release of information relating to the required Controlled Substances and Alcohol Inquiry of Prior Employers.

## **I-H. Return-To-Duty Process**

*This section will only be used if you allow individuals to go through the return-to-duty process after violating the prohibitions.*

### **Subjects covered in Section I-H are:**

1. Removal From Safety-Sensitive Duties
2. Initial SAP Evaluation
3. Treatment and/or Education
4. Follow-up Evaluation
5. Return-to-Duty Test
6. Follow-up Testing Program
7. Record Maintenance

### **1. Removal From Safety-Sensitive Duties**

Individuals who have violated the prohibitions, including testing positive for drugs or alcohol, cannot perform safety sensitive functions including, but not limited to:

- Driving

- Inspecting, servicing, or conditioning any commercial vehicle, at any time
- Repairing, obtaining assistance for, or remaining in attendance upon a disabled vehicle
- Loading or unloading a vehicle, supervising or assisting in loading or unloading, or attending a vehicle being loaded or unloaded

Using a driver who has violated a prohibition without having complied with the required return-to-duty process is a major problem. Federal DOT officials have indicated that this is their "Number One" concern. They levy significant fines in this situation since they believe that this puts public safety at grave risk.

### **2. Initial SAP Evaluation**

If you do not terminate the individual's employment, he/she will need a face-to-face evaluation by a qualified SAP



who meets the then-current requirements. This initial evaluation is to provide a comprehensive assessment and clinical evaluation to recommend a course of education and/or treatment for the individual.

### 3. Treatment and/or Education

Treatment and/or education is required for any individual who violates a DOT drug or alcohol prohibition. Appropriate education may include, but is not limited to, self-help groups, community lectures, etc., where attendance can be verified. Appropriate treatment may include, but is not limited to, in-patient hospitalization, out-patient counseling, or aftercare. The driver is required to comply with the recommendation(s) of the SAP.

As the employer, nothing in the regulations mandates that you are responsible for any of the treatment and/or education costs. The cost for treatment and/or education may or may not be covered by the employee's insurance, if any. You, as the employer would be responsible for costs if you agreed to provide it (union negotiation, etc.). Foley Carrier Services, LLC's Standard Policies indicate that the cost of treatment not covered by health care is the responsibility of the individual who has violated the prohibitions.

### 4. Follow-up Evaluation

The follow-up evaluation is a face-to-face interview, conducted by the SAP who did the initial evaluation, to determine whether the individual has complied with his/her recommendations. The SAP will provide you with a written report as to whether the individual has successfully demonstrated compliance or not. A SAP may determine that the individual has successfully demonstrated compliance even if the prescribed treatment and/or education has not been completed.

If the SAP states that the employee has successfully demonstrated compliance, you may proceed to the next step (the return-to-duty test) in the return-to-duty process.

If the SAP states that the employee has not successfully demonstrated compliance, you may not return the individual to safety sensitive functions and the regulations state that you may "take personnel action consistent with your policy and/or labor-management agreements."

The SAP may conduct additional follow-up evaluation(s) if you, as the employer, determine that doing so is consistent with the employee's progress as reported by the SAP, and your policy and/or labor-management agreement.

### 5. Return-to-Duty Test

Once the SAP reports to you that the individual has complied with his/her recommendations, you may now have the individual take the return-to-duty drug and/or alcohol test(s). The SAP will determine which test(s) should be conducted (drug/alcohol). All urine specimens for return-to-duty drug tests are collected under direct observation.

Keep in mind that our Standard Policies include time limits within which the return-to-duty test should be completed.

These limits are intended to keep you from having an individual take an extraordinarily long time in obtaining a negative return-to-duty test result because an individual continues to use a prohibited substance. The SAP may provide some guidance as to when the individual would be able to test negative if he/she has not continued to use a prohibited substance.

It is possible for an individual to have a positive return-to-duty test result and still have a subsequent negative return-to-duty test during the time limits listed in your policy. This second positive does not qualify as a violation of the prohibitions since the individual was not available to perform safety-sensitive functions. However, the Standard Policies indicate that additional return-to-duty tests would be at the expense of the individual.

In the Foley Carrier Services, LLC. Recommended Policy, in Section IX. EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES AND REQUIREMENTS, it states that an individual is required to obtain a negative drug and/or alcohol return-to-duty test within the time frames indicated below. This is the number of days from the date you received the SAP's written report stating that the driver had complied with the SAP's prescribed recommendations. At that time you, as the DAPM/DER would advise the individual to have the return-to-duty test(s) completed.

- Alcohol, Opiates, Cocaine,  
Phencyclidine, Amphetamines 5 Days
- Marijuana 40 Days

### 6. Follow-Up Testing Program

The SAP will provide you with a written follow-up testing plan for the employee. The SAP is the only individual who can determine the number and frequency of the follow-up tests and whether these tests will be for drugs, alcohol, or both. The individual will be subject to a minimum of six follow-up tests within the next twelve months after returning to safety-sensitive functions. You, as the DAPM/DER, determine the actual dates, not the SAP, since you are aware of the employee's performance issues and availability.

As the employer, you must follow the recommendations of the SAP. You cannot get a second opinion. The SAP is the only person who can change the follow-up testing plan.

All follow-up drug tests are to be "observed" collections to ensure that the individual does not attempt to adulterate or substitute the urine specimen. When scheduling the appointment, notify the collection site that an observed collection is required.

### 7. Record Maintenance

You must maintain information relating to the return-to-duty process (positive test results, SAP evaluations and reports of compliance with treatment/education recommendations, and follow-up testing plans) for a period of five years. These records should be filed in limited access areas that permit no unauthorized entry.



## I-I. Terminating an Individual

Review this section any time you are terminating an individual, regardless of whether you are terminating the individual because it was his/her first violation (First Termination Policy) or a second violation.

### Subjects covered in Section I-I are:

1. Review Your Policy
2. Provide Required Information
3. Proper Documentation
4. Record Maintenance

### 1. Review Your Policy

Review your policy to be sure that you are handling the termination in the appropriate manner. Regulation requires that, even if your policy states that you terminate an individual after a violation of the prohibitions, there is information that you must provide to the driver.

### 2. Provide Required Information

"As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent." — 49 CFR Part 40.287

Foley Carrier Services, LLC. is available to assist you with this information requirement.

Before the individual can be employed elsewhere in a safety-sensitive position, he/she will have to meet the DOT return-to-duty requirements (initial SAP evaluation, treatment/education, follow-up SAP evaluation, return-to-duty-test(s), follow-up testing), although it will not be your responsibility.

### 3. Proper Documentation

Before terminating a safety-sensitive individual for a violation of the prohibitions, it is important that you review that individual's file to ensure all paperwork is in order. Be sure the individual has signed:

Form DAT-4 ACKNOWLEDGEMENT OF RECEIPT AND REVIEW OF EMPLOYER'S CONTROLLED SUBSTANCES AND ALCOHOL POLICY AND EDUCATIONAL MATERIALS

### 4. Record Maintenance

You need to maintain information pertaining to positive test results for a period of five years. These records should be filed in limited access areas that permit no unauthorized entry.

We suggest that you have all forms associated with a prohibition of the violations completed.

# Section 2:

## Controlled Substances and Alcohol Testing

### II-A. General Testing Information

*This section provides general information about the testing program. Each of the testing situations will be discussed in detail in its own section.*

#### Subjects covered in Section II-A are:

1. Americans With Disabilities Act
2. Required Tests
3. Integrity of the Testing Process
4. Blind Specimen Testing Program

- Post-Accident
- Reasonable-Suspicion
- Random
- Return-to-Duty
- Follow-Up

Each testing situation is discussed in detail in the next sections.

#### 1. Americans With Disabilities Act

The following information comes from the discussion section in the applicable federal regulations regarding the Americans with Disabilities Act:

"In no case should any test result for alcohol or drugs under this part be used to infer that a person is an alcoholic or drug addict. Testing under this part determines whether a driver may need to be removed from safety-sensitive functions and must be referred to a substance abuse professional only. The tests under this part are conduct tests only, and do not determine the status of any person. Prospective employers should refer to the requirements of the Americans with Disabilities Act, and implementing regulations, 42 CFR Part 1630, before taking any employment actions based on SAP evaluations released by drivers to the prospective employer."

**Our Recommendation:** If you have an individual who claims that he/she has a disability due to controlled substances or alcohol, we recommend that you contact an attorney who specializes in this area for guidance.

#### 2. Required Tests

The following DOT Controlled Substances and Alcohol tests are required:

- Pre-Employment (Controlled Substances test is required – Alcohol test is allowed)

#### 3. Integrity of the Testing Process

Procedures that are used in the drug and alcohol testing program have been designed to "protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver."

All individuals submitting to required testing must be identified by photo ID or by an authorized employer representative to ensure that the individual being tested is the correct person. A social security number or employee identification number is used to track the urine specimen through the testing process. DOT-approved procedures which include: the chain of custody documentation, split specimen collection method, donors having visual contact with their specimen throughout the collection process, as well as tamperproof seals on the specimen bottles initiated by the donor, all contribute to the security and the integrity of the testing process.

#### 4. Blind Specimen Testing Program

Foley Carrier Services, LLC. submits blind specimens to all of our HHS certified laboratories to test the integrity of the testing process. These tests are unknown to the testing laboratory since they are indistinguishable from a normal specimen. Known positive, adulterated or substituted, as well as, negative specimens are sent. These blind specimens amount to 1% of the total number of controlled substances tests performed at that laboratory.

## II-B. Pre-Employment Testing

### Subjects covered in Section II-B are:

1. Pre-Employment Alcohol Testing
2. Pre-Employment Drug Testing
3. Pre-Employment Testing Exception
4. Non-negative Pre-Employment Drug Test Result
5. When a Pre-Employment Refusal is Not a Refusal-to-Test

### 1. Pre-employment Alcohol Testing

Pre-employment alcohol testing is allowed by regulation. Our standard policies state that employer may require pre-employment alcohol testing as allowed by 49 CFR Part 382.

A Federal Alcohol Testing Form (ATF) must be used and all DOT testing procedures are to be followed.

### 2. Pre-employment Drug Testing

Pre-employment drug testing is required for all safety-sensitive individuals. You are not to allow a driver who you intend to hire or use to perform safety-sensitive functions until you have received a verified negative result from the MRO office.

A Federal Drug Testing Custody and Control Form (CCF) must be used and all DOT testing procedures are to be followed.

### 3. Pre-Employment Testing Exception

There is an exception to pre-employment testing. You are not required to administer a pre-employment drug test if:

- The driver participated in a drug testing program that meets the DOT requirements within the past 30 days, AND
- While participating in that program, either
  - Had a drug test within the past six months (from the date of application with you), OR
  - Participated in the random program for the past 12 months (from the date of application with you); AND
- You must ensure that no prior employer of the driver, that you have knowledge of, has records of a violation of the prohibitions of Part 382 or any other DOT agency within the past six months.

To exercise the exception, you must contact the DAPM/DERs of the programs in which the driver participates or participated in and obtain specific information as outlined in 49 CFR Part 382.301(c)(1).

If you use, but do not employ, a driver more than once a year to operate a CMV, you are to complete the verification process outlined in 49 CFR Part 382.301(c)(1) every six months.

### 4. Non-Negative Pre-Employment Drug Test Result

A non-negative result is either a positive or refusal-to-submit (including refusal due to substitution or adulteration). For an individual to begin safety-sensitive functions, employer must have a negative pre-employment drug test result for the driver.

A non-negative pre-employment result requires all of the return-to-duty procedures that apply to an employee. Under Part 40, an employer may not use an individual for safety-sensitive functions unless the return-to-duty requirements have been met. If an applicant has not complete his/her return-to-duty requirements and you want to hire that individual, you are now responsible for ensuring that the remainder of the return-to-duty process is completed.

You are not allowed to send an individual for a second test hoping that the new result would be negative. Using an individual in a safety-sensitive function without having a negative drug test on file is a major violation.

Using an individual with a non-negative pre-employment drug test, without documentation of completing the return-to-duty requirements, is also a violation, for you as the employer.

**IMPORTANT!** If you deny employment to any individual for a non-negative pre-employment test, you should give that individual a copy of his/her test result and SAP information. Depending upon your state, you may be obligated by law to provide the non-negative test result.

### 5. When a Pre-Employment Refusal is Not a Refusal-to-Test

Pre-employment Refusal defined: There can be a legitimate reason an individual does not submit to a pre-employment test. The regulations have addressed this issue and defined when the consequences of a refusal do not attach to an individual who does not complete a pre-employment test. There are two situations that do not constitute a refusal for a pre-employment test and therefore the return-to-duty process does not have to be completed.

They are:

- If there is a legitimate reason that an individual does not appear for a pre-employment test.
  - A legitimate reason such as, he/she chose to take another job, decided not to leave present employment, etc.

- If there is a legitimate reason that an individual left a collection site BEFORE the collection began (defined as: when the specimen kit is selected).
  - A legitimate reason such as there was a long wait

and he/she had another obligation.

For your MIS records, you would need to document any pre-employment tests that were not conducted.

## II-C. Post-Accident Testing

*As the employer, it is your responsibility to ensure that testing of each surviving driver is completed when required. Regulations require that you provide your drivers with the necessary post-accident information, procedures and instructions prior to their operating a CMV, so that they will be able to comply with the requirements.*

### Subjects covered in Section II-C are:

1. When to Conduct Post-Accident Testing
2. When Not to Conduct Post-Accident Testing
3. Reasonable-Suspicion Testing After an Accident
4. Procedure for the Driver
5. Governmental Authorities Conducting Tests
6. Injured Driver
7. Post-Accident Testing Delays
8. Other CDL Issues

### 1. When to Conduct DOT Post-Accident Testing

**DOT post-accident testing is to be conducted only when the requirements listed below are met.** When required, you must start procedures for post-accident testing as soon as practicable.

#### POST-ACCIDENT TESTING QUALIFICATION

Post-accident testing is required when there is an occurrence involving a CMV operating on a public road in commerce when:

- A fatality has occurred or,
- A citation for a moving violation was received by the driver **and** an injury occurred requiring medical treatment away from the scene of the accident or,
- A citation for a moving violation was received by the driver **and** a vehicle involved in the accident required towing from the scene of the accident.

#### TIME LIMITS

There are mandatory time limits during which testing must be completed. You must attempt to complete the alcohol test within **two hours** following the accident. If this is not possible, it must be completed within **eight hours**. Drug testing must be completed within **32 hours** following the

accident.

**IMPORTANT!** You must take steps to have the driver tested as soon as possible after an accident, rather than allowing for the time limits. If any of the conditions listed above occur eight hours after the accident, you must document that as the reason the alcohol test was not performed and you must continue procedures to conduct the controlled substances test (to be completed as soon as practicable within 32 hours).

If testing is delayed or not completed, you are required to complete proper documentation. Refer to Subject 7. Post-Accident Testing Delays.

### 2. When Not to Conduct DOT Post-Accident Testing

If a citation was not given to the driver or if there was no fatality, do not have a post-accident test performed "just in case." The current interpretation of a "citation" by the DOT does not include a warning ticket. It does include any infraction(s) ticket or motor vehicle summons to appear for a moving violation in relation to the cause of the accident.

### 3. Reasonable-Suspicion Testing After an Accident

As a rule, you are not to conduct a federal post-accident test if the testing requirements were not met. However, even if the post-accident testing requirements were not met, you should conduct testing if the individual appears to be impaired. This would now become a reasonable-suspicion test, and would be documented as such.

Do not second-guess yourself if the police did not conduct testing because they did not feel the individual was impaired. Remember police and other law enforcement agencies are enforcing their laws and requirements. In all states, driving under the influence is an alcohol concentration of at least 0.08. DOT rules are looking at alcohol use of only 0.02 AC. It is very possible for a police officer not to test a driver because he/she does not feel the driver is impaired.

### 4. Procedure for the Driver

If any of the three conditions listed above is met within the

time limits, it is important that your driver be trained to follow these steps:

- Call and report the accident to you, as the employer. Follow internal procedures. Let you know where he/she can be reached. Record the date and time of the accident.
- Report the accident as required by State or Federal law.
- Call you, as the DAPM/DER for further information on how to complete the Post-Accident testing. If you cannot be contacted, be sure your drivers know that they can call Foley Carrier Services, LLC. at (800) 253-5506 to request information on how to conduct Post-Accident testing. Be sure each driver knows to state that this is a POST-ACCIDENT EMERGENCY and leave a telephone number where he/she can be contacted. They should not leave a message in voicemail since the testing is time sensitive.

## 5. Governmental Authorities Conducting Tests

When the Police or other Authority has conducted testing - (For FMCSA Employers only): If the police or other governmental authorities conduct a breath or blood alcohol test, or a urine test for controlled substances, you are permitted by regulation to use those tests, even though they may not otherwise meet the regulatory requirements.

You must get a copy of the test results if you are going to use them to fulfill your testing requirement. Because the alcohol test would be conducted shortly after the accident, it is more likely to reveal the correct alcohol impairment, if any. If only an alcohol test is performed, keep in mind that a controlled substances test must still be conducted. It is reasonable to wait to complete the controlled substances test until a collection site is open, providing the collection will still be completed within 32 hours.

If you are unsure if you will be able to have testing conducted by government authorities, you should proceed to have your FMCSA post-accident testing completed.

## 6. Injured Driver

If a driver, or any other individual, is injured in an accident, seeking and receiving medical treatment is a priority. If an injured driver is conscious and able to give permission, he/

she is to submit to post-accident testing.

**Drug Testing** - If an employee is catheterized as part of a medical procedure (following an accident), once the medical condition is stabilized and the employee can give his/her consent (e.g. understand that a DOT collection is required, sign the CCF), a specimen should be obtained.

## 7. Post-Accident Testing Delays

The regulations require that you have a workable procedure in place to ensure that post-accident testing can be completed. We provide information about a medical facility in your area that has the capability of conducting alcohol and drug testing in after-hour emergency situations. However, a situation may occur when post-accident testing could not be completed within the allowable time frames. In that situation, you are to maintain a written record as to why the testing was not completed. If an alcohol test was not performed within two hours after the accident you are to document why and continue to attempt to have the testing done.

If after eight hours, you are still unable to complete the alcohol testing, you are to cease any attempt at post-accident alcohol testing and document why it was not administered. For documentation, use:

- Use Form DAT-12, FAILURE TO COMPLETE FEDERAL POST-ACCIDENT OR REASONABLE-SUSPICION CONTROLLED SUBSTANCES AND/OR ALCOHOL TESTING

**NOTE:** If a required post-accident alcohol test is not completed at all, there will be two reports as to why the test was not completed (the two-hour report and the eight-hour report).

You are to cease any attempt to complete post-accident drug testing after 32 hours and document why the drug test was not administered. A written record of post-accident testing that was not completed should be maintained on file, and submitted to FMCSA upon request.

## 8. Other CDL Issues

If a driver refuses to submit to drug and/or alcohol testing after a fatal accident, other CDL issues unrelated to this program will apply. The driver will have his/her license suspended for one year.



## II-D. Reasonable-Suspicion Drug and Alcohol Testing

### Subjects covered in Section II-D are:

1. Reasonable-Suspicion Training for Supervisors
2. Elements of Reasonable-Suspicion Testing
3. Documentation of Reasonable-Suspicion Tests
4. Alcohol Testing During the Hours of Compliance
5. Removal From Driving Duty
6. Special Steps in Reasonable-Suspicion Testing
7. Reasonable-Suspicion Testing Delays

DOT Regulations require that you attempt a reasonable-suspicion drug and/or alcohol test if at least one supervisor who has completed the mandatory two hours of Supervisor Reasonable-Suspicion Training (one hour for alcohol and one hour for drugs), has identified a situation that meets the criteria for a reasonable-suspicion test. That supervisor must have evidence of that training on file (Form DAT-5, SUPERVISOR REASONABLE-SUSPICION TRAINING CERTIFICATE).

**IMPORTANT!** This determination for a reasonable-suspicion test must be based on specific, contemporaneous, articulable observations concerning the performance, appearance, speech, or body odors of the safety sensitive Individual.

"Impairment" should be thought of as a continuous scale, not as: "Is impaired," or "Is not impaired." If an individual is exhibiting signs of impairment you should not second-guess the degree to which you feel he/she is impaired. You should have the individual tested.

An employee should not be accused of being under the influence of drugs or alcohol. Instead, the employee should only be told that he or she has shown certain behavior and signs that lead you (the supervisor) to be concerned about his/her safety and that a drug and/or alcohol test is required. Keep in mind, it is possible that the individual whom you have decided requires a drug and/or alcohol test may have a negative test result. Only deal with whether he/she is "fit for duty."

**IMPORTANT!** It is best if you refer to Form DAT-5A REASONABLE-SUSPICION TESTING CHECKLIST before conducting any Reasonable Suspicion Tests.

### 1. Reasonable-Suspicion Training for Supervisors

The most important controlled substances or alcohol testing is for reasonable-suspicion. If you have an individual who is visibly impaired, you have an accident waiting to happen. You also may have an individual with a serious on-the-job problem.

**IMPORTANT!** All supervisors of drivers are required to complete Reasonable-Suspicion Training for controlled substances and alcohol (one hour for alcohol and one hour for controlled substances). We offer these options for this training:

- Use our self-study program that combines a video and written materials. It will take a minimum of two hours to complete this training. You will need to use this self-guided program for new supervisors as well as for re-training.
- Request On-Site training. We have instructors available to provide training at your facility.

After training, each supervisor needs to complete Form DAT-5, SUPERVISOR REASONABLE-SUSPICION TRAINING CERTIFICATE.

You only have to do this training once, but we strongly recommend that you repeat it periodically.

### 2. Elements of Reasonable-Suspicion Testing

**IMPORTANT!** Due to the importance and sensitive nature of reasonable-suspicion testing and an unfortunately high percentage of improperly conducted tests, it is very important that you have all of the following elements in place prior to actually performing a reasonable-suspicion test.

You need to:

- Issue your DOT Policy
- If you plan to conduct reasonable-suspicion testing per your own independent authority when a situation does not meet the stringent DOT criteria, you will need to have issued a General or Safety-Sensitive Policy. Call Foley Carrier Services, LLC. for more information about Drug Free Workplace (DFW) Programs that would afford you that flexibility if your state laws and/or regulations allow such testing.
- Have all Supervisors who could be in a position to make a reasonable-suspicion test determination complete Reasonable-Suspicion Training.
- Be sure not to involve individuals in the reasonable-suspicion determination who are not trained supervisors.
- Verify the collection sites' location, testing capabilities, and hours of availability.
- Have the proper custody and control forms (CCFs) readily available for drug testing - when performing a DOT required reasonable-suspicion test use a Federal CCF.

**IMPORTANT!** Provide all supervisors who are trained to make a reasonable-suspicion determination with Form DAT-5A REASONABLE-SUSPICION TESTING CHECKLIST

to prevent testing procedure errors.

### 3. Documentation of Reasonable-Suspicion Tests

**IMPORTANT!** If a supervisor identifies an individual who should be considered for a reasonable-suspicion test, the supervisor must complete Form DAT-6, REASONABLE-SUSPICION RECORDING FORM, within 24 hours of the observed behavior or before a drug and/or alcohol test result is returned, whichever is first. If you can't determine the substance (drugs or alcohol) you want the individual tested for, you can have **both** an alcohol and a drug test performed. For example, slurred words and staggering, but no odor of alcohol would result in only a drug test, or both tests if you choose.

After completing Form DAT-6, retain it in the Driver's CONFIDENTIAL DRUG AND ALCOHOL TESTING FILE (secure area with controlled access).

Written documentation is required for all reasonable-suspicion testing, whether it is for drugs, alcohol, or both. Document the facts; don't diagnose problems. For example, "staggering" is an observable fact, but "drunk" is a diagnosis.

### 4. Alcohol Testing During the Hours of Compliance

There is an important consideration regarding reasonable-suspicion alcohol tests that must be taken into account.

The regulations require reasonable-suspicion alcohol testing only when the observations were made just preceding, during, or just after the work period in which the safety sensitive Individual is performing a safety sensitive function (driving), OR

Is at that time immediately available to perform those activities.

### 5. Removal From Driving Duty

If, through the supervisor's independent observation, the Individual appears to be subject to reasonable-suspicion testing, the supervisor shall remove him/her from safety-sensitive duties until an alcohol and/or drug test is conducted.

#### ALCOHOL TESTING

If an alcohol test is conducted, you shall not permit the driver to perform, or continue to perform, safety-sensitive functions until an alcohol test is administered with a result less than 0.02 AC, or 24 hours have elapsed since the supervisor's determination that a reasonable-suspicion alcohol test was required.

An alcohol test result of 0.04AC or greater is a violation of the prohibitions. The individual needs to be removed from duty and you would implement your policy regarding a violation of the prohibitions (termination, or return-to-duty process).

**IMPORTANT!** With respect to alcohol use, no action, other than removal from safety sensitive functions (as previously discussed) shall be taken against the driver based solely on behavior and appearance in the absence of an alcohol test result. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

#### DRUG TESTING

The regulations do not clearly indicate when you shall return an individual who has had a reasonable-suspicion drug test to safety-sensitive functions. We advise that you wait until you receive the verified drug test result from the MRO.

#### REFUSAL

In cases where the individual refuses a reasonable-suspicion test, this is a violation of the prohibitions, with all consequences previously discussed.

### 6. Special Steps in Reasonable-Suspicion Testing

You should take reasonable measures to ensure the safety of the public and the individual by transporting the individual to the collection facility and to require that either a supervisor or family member transport the individual home. If the individual insists upon driving on his/her own, you should consider taking steps to terminate that individual on the spot and notify the proper authorities.

If you, or management, feel that emergency medical service is required, you should act on your best judgment.

### 7. Reasonable-Suspicion Testing Delays

If a required DOT reasonable-suspicion alcohol test is not administered within two hours following the determination of need by an approved process, you are to prepare and maintain on file a record stating the reasons why the test was not promptly administered. Use Form DAT-12, FAILURE TO COMPLETE POST-ACCIDENT OR REASONABLE-SUSPICION CONTROLLED SUBSTANCES AND/OR ALCOHOL TESTS.

If after eight hours, the alcohol test is not administered, all attempts to administer the test shall cease. A statement for the record shall be made and kept on file as to the reasons for the failure to administer the test.

If a determination was made to conduct a reasonable-suspicion drug test and it was not conducted within 32 hours, you are to document the reason why and cease all attempts to have the testing completed.

For more information on the necessary documentation, refer to Post-Accident Collection Delays in the previous section.

## II-E. Random Testing

### Subjects covered in Section II-E are:

1. Notification of Random Selections
2. Alternate Selections Not Allowed
3. Unfulfilled Random Selections

The names of individuals selected for random testing, as well as the testing dates, are to be unpredictable and reasonably spread throughout the year. Regulations require that at each draw, each individual in a random selection pool has an equal chance of being selected for testing.

Once an employee's name is selected randomly, his/her name is returned to the pool for possible future selection. As a practical matter relating to random selections, certain individuals will be selected multiple times and others very infrequently, if at all, over a period of years. Foley Carrier Services, LLC.'s random selection process is computer generated, without bias to individuals (or companies, if in a consortium pool) within the random selection pool.

**EXCEPTION:** If you use, but do not employ, a driver more than once a year you must obtain the information requested in 49 CFR Part 382.301(c)(1) at least once every six months. This information provides you with the verification that you need ensuring that the driver(s) in question are part of a compliant program. This rule applies to pre-employment testing, but we have included it here as a reminder to do this verification if you are using a driver who is not in your random testing program.

### 1. Notification of Random Selections

You, as the DAPM/DER, may delay notification of an individual selected for random testing only for a short period of time. This means you may wait a day or two after the Foley Carrier Services, LLC. Notification Date, but you should not delay it any further without cause (individual on vacation or out sick). This is to avoid the problem of "quasi-reasonable-suspicion" where the DAPM/DER delays the random test until he/she feels there is a good chance of "catching" the individual. Random tests are to be completed within the selection period in which they were chosen.

**IMPORTANT!** Once you have notified the selected individual, he/she is to proceed immediately to the collection site.

You should indicate the notification time on Form DAT-11A, CONTROLLED SUBSTANCES AND/OR ALCOHOL TEST COLLECTION TRACKING FORM and compare it with the collection/test time on the controlled substances and/or alcohol test form to verify that the individual proceeded as directed. Please be aware that the time noted

on the form is not necessarily the time the individual arrived at the medical facility. It may denote the time the collection/testing process started. If you have a problem with the timing of the collection, call the collection site immediately for verification.

If you, as the DAPM/DER are subject to random selection, we suggest that you have a secondary DAPM/DER to whom we can send the notification if you are randomly selected.

### 2. Alternate Selections Not Allowed

The DOT has clarified their position on using alternate random selections. The intent is that the individual who is randomly selected is the individual who ultimately gets tested. You are not to simply test another driver because the selected individual is not readily available for testing. You have the entire selection period within which to have the selected driver tested.

If you have an individual who will not be returning to work before the end of the selection period, notify Foley Carrier Services, LLC.'s Random Administration Department.

### 3. Unfulfilled Random Selections

When we have not received the test results for an individual who was selected for random testing, we will send you a Reminder of Random Selections. This mailing usually goes out the second week of the last month of a quarter. (e.g., an August 8th random selection that remains unfulfilled will receive a reminder notice around September 12th.)

This does not mean the individual did not go for testing. It only means that we do not have the test result(s) on file. This can happen for a variety of reasons, such as:

- A drug test **was not** performed using one of **our** custody and control forms (CCFs), therefore the test went through a different MRO,
- The BAT did not report the alcohol test result to us, as requested
- The identification number (social security number or employee ID) did not match the number that we have on file for the individual, etc.

Should you receive this type of notice and have the result(s) on file for the individual and date indicated, please make a copy of the results and mail them to:

**Foley Carrier Services, LLC.**

**140 Huyshope Avenue**

**Hartford, CT 06106**

**or fax them to our Confidential Fax:**

**(860) 913-2452**

We will then document the results and thus “fulfill” the random selection. For semi-annual and year-end reporting requirements, it is important that we have all completed tests documented for you.

If the individual was not sent for testing due to an extended leave, seasonal layoff, etc. call us so that we can update our program records to reflect this information. In the future, if you receive a notification for an individual that is either no longer in your employ, or out on extended

leave, etc., call us upon receiving the notification and we will document the selection appropriately.

**If the individual did not go** due to this type of unavailability, but is available to go for testing now and the selection period has not expired, please send the individual for his/her testing. If the selection period has expired, do not send the individual for testing as that random selection is no longer valid.

## II-F. Return-To-Duty Testing

Following a violation of the prohibitions, if you do not otherwise terminate an individual, a negative drug and/or alcohol return-to-duty test result is required before you can use an individual in a safety-sensitive capacity. This test cannot be conducted until the requirements that precede the return-to-duty test have been completed. Refer to Section I-H. RETURN-TO-DUTY PROCESS

All return-to-duty drug tests are to be “observed” collections to ensure that the individual does not attempt to adulterate or substitute the urine specimen. When scheduling the appointment, notify the collection site that an

observed collection is required.

**IMPORTANT!** The financial responsibility for the return-to-duty test(s) is outlined in the Policy, Section X: EMPLOYER’S INDEPENDENTLY AUTHORIZED FINANCIAL RESPONSIBILITIES. If you allow your employees to go through the return-to-duty process we will invoice you, as the employer, and you are responsible for collecting any test fees from the individual. The SAP fees will be payable as agreed when the arrangements are made with the SAP.

## II-G. Follow-Up Testing

The regulations require six follow-up tests within the first 12 months after returning to duty for those individuals who violated the prohibitions and complied with the SAP recommendations, had a negative return-to-duty test and were returned to safety-sensitive functions. All follow-up drug test urine specimen collections must be directly observed.

All follow-up drug tests are to be “observed” collections to ensure that the individual does not attempt to adulterate or substitute the urine specimen. When scheduling the

appointment, notify the collection site that an observed collection is required.

The individual in a follow-up testing plan, who has returned to safety-sensitive functions, will remain subject to random selections at the same time.

After the minimum of six tests is completed with negative test results, the SAP is permitted to remove the individual from the follow-up testing program, although this is rarely done. The individual must be removed after 60 months from returning to duty.

## II-H. Collection Site(s)

*This section discusses your assigned collection sites and reviews how to determine the services, hours, and forms used at a particular site.*

### Subjects covered in Section II-H are:

1. Designated Medical Facilities
2. Services Offered at Each Medical Facility

### 1. Designated Medical Facilities

Foley Carrier Services, LLC. has provided you with a listing of Designated Medical Facilities. This collection site listing represents medical facilities in your area that have agreed to do specimen collections for clients of Foley Carrier Services, LLC.

Should you require additional facilities at which to have

your testing conducted, please contact Foley Carrier Services, LLC's Collection Site Administrators.

## 2. Services Offered At Each Medical Facility

The *Designated Medical Facilities* letter provides the pertinent information about the collection site(s) that you have been assigned.

These sites perform some or all of the following services:

- Urine specimen collection for a drug test (Hours are listed)
- Breath alcohol testing (Only performs alcohol testing if hours are listed or it states "Same.")
- Emergency collection for drug as well as breath alcohol testing for post-accident testing and reasonable-suspicion testing that occurs after regular business hours. (Will state "Yes" next to After Hours Emergency Coverage.)

- On-site collections – may require additional fee

Please read the *Designated Medical Facilities* letter to become acquainted with the services offered at each collection site. You will notice that not all sites perform the same functions.

Should you have an after-hours emergency and it is outside your assigned collection site area OR if you cannot obtain assistance from your after-hours collection resource, call: **Foley Carrier Services, LLC. at 1-800-253-5506**. Explain to the answering service that you have an emergency and they will take the appropriate information and contact our on-call personnel.

It may be useful for your drivers to keep the forms used for drug testing in their trucks at all times, in the event that a test needs to be conducted while a driver is on the road, as in a post-accident test after hours.

## II-I. Sending An Individual for Testing

*This section discusses your assigned collection sites and reviews how to determine the services, hours, and forms used at a particular site.*

### Subjects covered in Section II-I are:

1. Schedule an Appointment
2. Documentation
3. What the Donor Needs to Bring For Testing
4. What the Donor Needs to Know

To ensure that collections are done in a timely manner, it is always best to follow the protocol outlined below. If you experience any problems with a collection site, please call Foley Carrier Services' Collection Site Administrators for assistance.

### 1. Schedule an Appointment

Call your collection site to schedule an appointment for:

- A DOT (federal) drug screen collection OR
- A DOT drug screen collection and a DOT breath alcohol test.

Inform the collection site personnel that you are with Foley Carrier Services, LLC. so they will know to bill us for the drug screen collection and breath alcohol test. We realize that some walk-in facilities will not make appointments. There is nothing you can do in that situation. However, the regulations require that a collector notify the DER if an individual did not arrive at the collection site in a timely manner for a scheduled appointment. Therefore, it is to

your advantage to have scheduled an appointment for your driver.

**Direct Observation:** If you need to schedule a test to be conducted under direct observation (for a follow-up, return-to-duty test, or if the MRO has requested it because of an invalid or negative-dilute test result), you must tell the scheduling person at the collection site of this requirement. Direct observation collections require a **same gender collector or observer** and the facility may need to make special arrangements for that specific collection. When an observer of the same gender is not available at the collection site, the collector or collection site supervisor may ask you to send an individual who is the same gender as the employee to act as an observer. An employer-provided observer should not be a co-worker nor a supervisor who works closely with the employee. Try to find a supervisor who doesn't work with the employee on a daily basis to send to the collection site to facilitate the observed urination.

### 2. Documentation

You may wish to document pertinent information for the scheduling and notification of the collection. To help with this documentation we provide the following on the Policy and Manual CD:

- FORM DAT-11A, CONTROLLED SUBSTANCES AND/OR ALCOHOL TEST COLLECTION TRACKING FORM

### 3. What the Donor Needs to Bring for Testing



Providing the donor with the proper forms and authorizations will help the collection/testing procedure go smoothly. The authorization form is important in the event that there is a problem with the collection procedure and the collector needs to contact you.

Be sure that the donor has the following items before going to the site:

- For a drug test he/she must bring a CCF, the multi-page laboratory form that says "Federal Drug Testing Custody and Control Form" at the top.
- For a random test, the RANDOM TEST NOTIFICATION AND AUTHORIZATION will be included with your notification. For all other types of tests, use FORM DAT-13, FEDERAL TEST NOTIFICATION AND AUTHORIZATION.
- A picture ID, such as a driver's license

- Directions to the collection site

## 4. What the Donor Needs to Know

Before sending an individual for testing, it is important that he/she have an understanding of the following:

- Consequences of not arriving at the collection sites in a timely manner.
- Collection responsibilities of the driver as described in the Educational Materials section of the Policy. This includes the need for the donor to cooperate with the collection process and the consequences for submitting a substituted or adulterated specimen.
- The consequences of not providing a sufficient quantity of urine or breath within the allowed time frames. See Section II-J SHY BLADDER and SHY LUNG as well as the Educational Materials section of the policy.

## II-J. Collection Procedure

*This section provides more detailed information regarding the actual drug screen collection procedure and the breath alcohol testing procedure.*

### Subjects covered in Section II-J are:

1. Privacy
2. Routine Collections - Drug
3. Monitored Collection – Drug
4. Directly Observed Collection - Drug
5. Reporting Procedures
6. Shy Bladder
7. Testing of the Split Specimen
8. Routine Collections - Alcohol
9. Shy Lung

FMCSA regulations allow only urine specimens for drug testing. These collections are conducted using the split-specimen procedure that is explained in the policy we provide. There are additional safeguards in place throughout the collection and testing process to help ensure the validity of the entire procedure for drug and alcohol testing.

### 1. Privacy

The DOT Procedures for collecting urine specimens shall allow an individual visual privacy unless there is a reason for the collector to conduct a specimen collection under direct observation. Please read the section DIRECT OBSERVATION.

Since an alcohol test result is printed immediately as a part of the collection process, the individual is to be afforded

both visual and aural privacy.

### 2. Routine Collections - Drug

Following is the procedure for a routine specimen collection. Your driver will be asked to:

- Show his/her photo ID
- Remove any unnecessary outer garments such as a jacket or hat.
- Leave personal belongings (purse, briefcase, etc.) with outer garments (he/she may request a receipt). Driver may keep his/her wallet.
- Empty his/her pockets and display the items in them for the collector. Once the collector has inspected the items, the driver may return them to his/her pockets unless there is anything that could be used as an adulterant, such as eye drops. The collector may retain that item with the other belongings until the collection is completed. If the driver has anything that appears to have been brought for the purpose of tampering with the specimen, a directly observed collection will be conducted (See Subject 4. DIRECTLY OBSERVED COLLECTION).
- Not to attempt to adulterate or substitute a specimen.
- Wash and dry his/her hands immediately prior to providing a specimen, when requested by the collector.
- After washing his/her hands, remain in the presence of the collector. The driver shall not have access to any water fountain, faucet, soap dispenser, cleaning agent, etc.

- Either the driver or the collector will select a collection kit.
- Either the driver or the collector will unwrap the collection container.
- The driver will be allowed privacy while providing his/her specimen (unless subject to a directly observed collection).
- Provide a urine specimen as directed.
- Provide at least 45mL of urine into the collection container.
- Do not flush the toilet until requested to do so by the collector.
- The collector will check the volume of the specimen, the temperature of the specimen, and check for other signs of tampering, such as foreign objects, unusual odor or color.
- Observe the collector pour the urine into two specimen bottles. A minimum of 30mL will be poured into the primary specimen bottle and a minimum of 15mL into the second bottle (to be used as the split specimen). The bottles will then be sealed.
- Excess urine can be used to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. No further testing can be performed on the excess urine and it cannot be turned over to the donor.
- When so directed by the collector, initial the bottle seals and sign the custody and control form (CCF).
- If an adequate amount of urine is not initially provided (less than 45mL), the collector will discard the original specimen and offer fluids (not to exceed 40oz) that are reasonably distributed over a period of time not to exceed three hours. If, after three hours, the driver is still unable to provide an adequate specimen, the MRO will contact the employee, and a medical evaluation must be conducted by a physician to determine if there is a medical explanation for the failure. (See Subject 6. SHY BLADDER)
- If the laboratory reported to the MRO that an employee's drug test result was invalid and the MRO reported to you that there was not an adequate medical explanation for the result.
- If the laboratory reported to the MRO that an employee's drug test result was Negative Dilute with the creatinine level between 2.0 and 5.0mg and the MRO reported the result as Negative-Dilute with an immediate recollection required under direct observation.
- If, at the time of the collection, the collector notices any irregularities in a donor's conduct, or the actual specimen, that gives him/her reason to believe that it could have been tampered with, such as:
  - Donor brought materials into the collection site that clearly indicate an attempt to tamper with the specimen
  - The specimen has bluing in it
  - The temperature is not within range
  - There is visible sediment in the specimen
- If the collector learns that a direct observation collection should have been performed and was not, the collector will inform you to have the employee return for an immediate recollection.
- If an employee had an original positive, adulterated, or substituted test result and the result had to be cancelled because the split-specimen was unavailable for testing, or in the case of a positive result, testing of the split specimen resulted in an invalid result, the MRO will direct you to send the employee for an observed collection.
- If the test is a return-to-duty or follow-up drug test, the urine specimen must be collected under direct observation.

#### **DIRECT OBSERVATION COLLECTION PROCEDURES**

The individual who conducts the observation must be the same gender as the donor. The collector may use an individual who is the same gender as the donor to conduct the direct observation. The collector will conduct all other parts of the collection.

- A directly observed collection virtually eliminates any attempt to adulterate a specimen. The donor is required to lower his/her pants and underpants to mid-thigh, and raise his/her shirt/blouse/skirt to the navel, as appropriate, and turn completely around so that the collector can ensure that the donor does not have a prosthetic device that could be used to cheat on the drug test. The donor will then be permitted to return his/her clothing to the proper position and proceed with the observed urination. Per regulation, the observer needs to specifically watch the urine go from the donor's body into the collection container. If the observer is not the collector, remember that the donor must give the collection cup to the collector and NOT to the observer.

### **3. Monitored Collection – Drug**

In certain situations, a collection may be conducted as a monitored collection, where a medical professional or same-gender individual stands outside the stall while the driver provides a specimen inside the stall. This occurs in the case of a multi-stall bathroom where it is not feasible for the collector to completely secure the bathroom.

### **4. Directly Observed Collection – Drug**

In specific situations, DOT regulation will require that an individual submit to a urine collection under direct observation by a same-gender individual.

The following are direct observation situations:

## 5. Reporting Procedures

You will be advised by phone of all verified non-negative drug test results (includes positives, refusals to submit due to adulteration or substitution, as well as situations when an employee is required to undergo an immediate recollection under direct observation. You will also be immediately advised of all verified negative pre-employment, post-accident, reasonable-suspicion, return-to-duty, or follow-up tests. Negative random drug test results will not be communicated by phone.

The MRO Verification Statement of the drug test will be mailed within two days of the MRO's review.

The MRO shall report to the employer the laboratory findings of a dilute specimen when the specific gravity is over 1.001 and the creatinine level is below 20 mg but over 5.0 mg/dL. Having a second collection conducted following a negative-dilute drug test result is discussed in the Employer Authorized Consequences and Requirements section of your policy.

Alcohol test results are not subject to MRO review. The BAT will notify you by telephone as soon as possible if an individual had an alcohol test result of 0.02AC or greater. The actual alcohol test result will be sent to you. It is the responsibility of the employer (DAPM/DER) to review and audit the alcohol test result.

## 6. Shy Bladder

If an individual fails to provide an adequate amount of urine for a specimen collection, he/she will be allowed up to three hours to provide the required amount. During that period the donor will be urged to consume up to 40 ounces of fluid.

The donor will be allowed to make additional attempts during the three-hour period. It is best that the donor allow some time between his/her last provision and the next attempt, to allow the bladder to fill. However, if the individual is unable to provide a sufficient specimen and the three hour wait time has lapsed, the collector will note that fact in the Remarks section on the custody and control form (CCF) and allow the donor to leave the testing site. The collector shall distribute the MRO and employer copies as needed. The MRO shall notify you of the failure to provide an adequate specimen. You, as the DAPM/DER, shall direct the individual to obtain, within five days after the attempted provision of urine, an evaluation from a licensed physician who is acceptable to the employer. The physician shall determine whether the individual has, or with a high degree of probability, could have a medical condition that could have precluded him/her from providing the adequate amount of urine. A medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a documented pre-existing psychological disorder. It does not include unsupported assertions of "situational anxiety" or dehydration.

The physician will provide the MRO with a written state-

ment of his/her conclusion of the evaluation.

The MRO shall notify the company in writing of his/her determination as to whether the individual's inability to provide a specimen was genuine or constitutes a "refusal-to-submit." If there is a valid medical reason why the individual was unable to provide a specimen, the MRO will cancel the test. No further action is needed unless a negative result is required, such as for a pre-employment or follow-up test.

**IMPORTANT!** Evaluation by a physician regarding a "shy bladder" will not postpone removing the individual from safety sensitive duties. See WHAT TO DO IF AN INDIVIDUAL VIOLATES THE PROHIBITIONS in Section I-G.

## 7. Testing of the Split Specimen

All urine samples will be collected utilizing the split sample method.

If a driver has a verified non-negative (that is, positive, adulterated or substituted) controlled substances test result after MRO review, the driver will have the option to have the split specimen tested at another HHS certified laboratory. The driver cannot select the new testing laboratory; the MRO will make that selection. The MRO shall notify the driver that he/she has 72 hours within which to request the split specimen testing.

Whether or not the individual chooses to have the split specimen tested, you should have the individual document his/her decision on Form DAT-14 Notice of SPLIT SPECIMEN TESTING OPTION.

If the driver chooses to have the split specimen test conducted, he/she must verbally notify the MRO of the request for the test and send the MRO written notification via certified mail (return receipt requested), or fax to the confidential fax listed below. If faxing, it is the driver's responsibility to call and verify that the fax was received.

The driver must send a copy of the request to the Employer's DAPM/DER.

If driver did not request the split specimen test within the time requirement, the applicable DOT regulations add a difficult element regarding this right to have the split specimen tested. Per 49 CFR Part 40.33 (g), if a driver did not request a split portion test within the 72 hour requirement, he/she may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified test result, or other unavoidable circumstances prevented the employee from contacting the MRO in a timely fashion. If this information is acceptable to the MRO, he/she shall direct the analysis of the split specimen.

Although the thresholds for the presence of a prohibited substance will be as mandated by the DOT, presently, the threshold for a re-confirmation of the original result is at any detectable presence. If the split specimen test does not re-confirm the non-negative for any reason (e.g. the

specimen is lost, spoiled, drug metabolites were not detected, etc.), the test will be canceled.

## HOW TO FIND YOUR MEDICAL REVIEW OFFICER (MRO)

Your MRO name and contact information can be found on your Federal Custody and Control Form. This information is printed in Box 'B', (Titled 'MRO Name, Address, Phone No. and Fax No.' and is located in the top right corner of the Federal CCF.

### What is a Federal Custody and Control Form?

The Federal Custody and Control Form is a five page, pinned form which includes security seal stickers on the front page. Your Federal CCFs were sent separately from your other program materials.

If you need assistance locating this information or if you do not have a Federal CCF, please call 1-800-253-5506 to speak with a Customer Service Representative.

## EMPLOYER MUST HONOR REQUEST

The Foley Carrier Services, LLC Standard Policy states under the Employer Authorized Financial Responsibilities Sections that the driver is responsible for the cost of the split specimen testing. **However, an employer is to ensure that any request for the split specimen test is honored and completed, independent of payment and collection options. This is a regulatory requirement.**

**Note:** You could be making a decision to terminate a driver's employment prior to the driver having the split specimen test completed. It is our recommendation that you place an individual on unpaid leave if he/she requests the testing of the split specimen. This allows time for the testing to be completed and if there should be a problem that causes the test to be cancelled, you will not need to reinstate an individual who may have been terminated.

## 8. Routine Collections - Alcohol

The Breath Alcohol Technician (BAT) must prevent unauthorized personnel from entering the testing site. DERs, employee representatives authorized by the employer (e.g., on the basis of employer policy or labor-management agreement), and DOT agency representatives are allowed to be present during the testing. Any person who obstructs, interferes with, or causes unnecessary delay in the testing process will be removed from the testing site.

The BAT, or collection site personnel will notify you if an individual did not appear for a scheduled appointment. Depending upon when you notified the individual to go for testing, he/she could be in a refusal-to-test situation.

Alcohol testing will be conducted first if both drug and alcohol testing are required. The BAT will not delay the alcohol testing, even if an authorized employer or employee representative is delayed in arriving.

## COLLECTION PROCEDURE

The BAT will require the employee to provide positive

identification. It must be a photo ID issued by the employer or a Federal, state, or local government (e.g., a driver's license). Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable.

The BAT will explain the testing procedure to the employee.

The employee will be directed to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, the BAT will document the refusal on the "Remarks" line of the ATF and immediately notify you. **This is a refusal-to-test.**

The BAT or employee will select an individually wrapped or sealed mouthpiece from the testing materials.

The mouthpiece will be unwrapped in view of the employee and inserted into the device in accordance with the manufacturer's instructions.

The driver will be instructed to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

The BAT will show the employee the displayed test result.

If the result is less than 0.02 AC, the BAT will transmit the result to you in a confidential manner.

## CONFIRMATION TEST

If the test result is an alcohol concentration of 0.02 or higher the employee will be directed to take a confirmation test.

The BAT will advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch during the waiting period. The waiting period is required to prevent an accumulation of mouth alcohol from leading to an artificially high reading – this is to the employee's benefit.

The waiting period will be at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, the confirmation test will begin as soon as possible, but not more than 30 minutes after the completion of the screening test.

The confirmation test will be conducted at the end of the waiting period, even if the instructions were not followed. The BAT will note on the "Remarks" line that the waiting period instructions were provided.

In the presence of the employee, the BAT will conduct an air blank on the EBT being used before beginning the confirmation test. The employee will be shown the reading to ensure that it reads 0.00.

A new individually wrapped or sealed mouthpiece will be opened in view of the employee and inserted into the device.

The employee will be shown the unique test number displayed on the EBT.



Once again, the employee will be instructed to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

The employee shall be shown the result displayed on the EBT.

The employee shall be shown the result and unique test number that the EBT printed out either directly onto the ATF or onto a separate printout.

The employee shall be given a copy of the result.

If the confirmation result is over 0.02 AC, the BAT will notify the DER who is identified on the Federal Notification and Authorization Form.

If the result is over 0.02 AC, but less than 0.04 AC, the driver will be removed from driving duty for one shift, not less than 24 hours.

If the result is over 0.04 AC, the individual has a positive test result and that means he/she has violated the prohibitions. Refer to Section IX of your policy for the consequences associated with the violation.

## 9. Shy Lung

If, after several attempts an individual fails to provide an adequate amount of breath for testing, the BAT will discontinue testing and tell the donor that he/she (the BAT) is noting the fact in the Remarks section of the Alcohol Test Form (ATF). The BAT will then notify you, as the DAPM/DER, that the individual was unable to provide an ade-

quate amount of breath for the test. Upon notification of this event, you shall direct the individual to obtain, within five days after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to you, as the employer, concerning the employee's medical ability to provide an adequate amount of breath.

If the physician determines that the individual has, or with a high degree of probability, could have a medical condition that could have precluded him/her from providing the adequate amount of breath, the employee's failure to provide an adequate amount of breath would not be considered a refusal-to-submit. The test will be canceled.

If the physician determines that there was not a reasonable medical reason for the employee's failure to provide an adequate amount of breath, it shall be deemed a refusal-to-submit.

The physician shall provide you with a written statement of the basis for his/her conclusion. It is your responsibility as the DAPM/DER to ensure that the evaluation is conducted and that the written statement from the physician is received. You, as the DAPM/DER, must decide whether to accept the physician's conclusion as a reason for the failure to provide an adequate amount of breath. The final determination of a refusal-to-submit for alcohol testing is at the discretion of the employer.

**IMPORTANT!** Evaluation by a physician regarding a "shy lung" will not postpone removing the individual from safety sensitive duties. See WHAT TO DO IF AN INDIVIDUAL VIOLATES THE PROHIBITIONS in Section I-G.

## II-K. Refusal-To-Submit

Should you have an individual who refuses to test you are to document the occurrence. Use FORM DAT-15, DRIVER'S VIOLATION HISTORY. As far as the employee is concerned, a refusal has the same consequences as a positive test result.

Since an individual could inadvertently be in a refusal-to-submit situation, it is imperative that all drivers, their supervisors and others associated with this program understand what constitutes a refusal-to-submit.

The following situations are "refusals to submit":

- Failure to appear for any test (except a pre-employment test). Employees must arrive for a Federal drug or alcohol test within a reasonable amount of time as determined by the employer.
- Failure to remain at the testing site until the testing process is complete. Leaving for any reason before all the required steps of the testing process are completed. (Something as innocent as leaving to pick the kids up from school could be deemed a refusal-to-submit if the collection was not completed.)
- Failure to provide a urine specimen for any required

drug test. The only exception is when the donor in a pre-employment test leaves before the collection kit is selected.

- Failure to cooperate with any part of the testing process. If the employee refuses to empty his or her pockets, behaves inappropriately or disrupts the collection process, or refuses to wash his or her hands, the collector will stop the collection and note it as a refusal-to-test.
- Failure or refusal to take an additional test as directed by the employer or collector.
- Failure to provide a sufficient amount of urine for a drug test when directed, and it has been determined, through a medical evaluation, that there was no adequate medical explanation for a failure. In alcohol testing, failure to provide a sufficient amount of saliva or breath without a valid medical explanation.
- Failure to undergo a medical examination or evaluation as directed by the MRO as part of the verification process or as directed by the Designated Employer Representative.



- In the case of directly observed or monitored collections, failure to permit the observation or monitoring of the provision of the specimen. Employee must provide a specimen under the required conditions.
- In a directly observed collection, failure to follow the observer's instructions. The employee must lower and raise his or her clothing, as required, and turn around to prove that he or she is not concealing a device that could be used to interfere with the collection process.
- Admitting to the collector or Medical Review Officer that he or she has adulterated or substituted a specimen.
- Wearing or possessing a prosthetic or other device that could be used to interfere with the collection.
- Failure to attempt to provide a breath sample in an alcohol test.
- The MRO reports that an employee has a verified adulterated or substituted test result. Attempts to adulterate or substitute a urine specimen are often revealed during laboratory testing.
- Failure to sign the certification during Step 2 of the Alcohol Testing Form, as alcohol testing must be certified by the employee. (Not signing the certification statement during Step 4 of the Alcohol Testing Form is not a refusal-to-test.) In drug testing, failure to sign the certification statement during Step 5 of the Custody and Control Form is not a refusal-to-test

# Section 3:

## Appendix

### Hiring a Driver

The following steps exclusively affect your DOT Controlled Substances and Alcohol Testing Program. You may have other Employer activities not addressed herein that need to be completed when hiring a new driver.

1. INFORM APPLICANT THAT THE JOB OFFER IS CONTINGENT UPON A NEGATIVE DRUG TEST RESULT (AND NEGATIVE ALCOHOL TEST RESULT, IF APPLICABLE)
  - DAT-4, Acknowledgement of Receipt and Review of the Employer's Controlled Substances and Alcohol Policy and Educational Materials
2. PROVIDE APPLICANT WITH A COPY OF FORM DAT-21, APPLICANT NOTIFICATION, OR
3. MAKE A COPY OF YOUR CONTROLLED SUBSTANCES AND ALCOHOL POLICY AVAILABLE TO THE APPLICANT
  - DAT-13, Federal Testing Notification and Authorization
4. YOU MAY CONDUCT A SUPERVISED DRIVING PERFORMANCE REVIEW PRIOR TO CONDUCTING THE PRE-EMPLOYMENT TEST
6. CONDUCT THE PRE-EMPLOYMENT TEST (SEE SECTION: SENDING AN INDIVIDUAL FOR AN ALCOHOL AND/OR CONTROLLED SUBSTANCES TEST)
7. BEGIN THE DRUG AND ALCOHOL TESTING INFORMATION INQUIRY
8. NOTIFY FOLEY CARRIER SERVICES, LLC THAT YOU HAVE ADDED A NEW EMPLOYEE
9. START COMPILING A CONFIDENTIAL FILE FOR THE NEW EMPLOYEE
5. HAVE THE APPLICANT SIGN THE FOLLOWING FORMS:
  - DAT-2, Inquiry for Alcohol and Controlled Substances Information from Previous Employer
  - DAT-3, Applicant Certification Statement

### Conducting An Alcohol And/Or Drug Test

1. CALL YOUR COLLECTION SITE TO SCHEDULE AN APPOINTMENT FOR THE ALCOHOL AND/OR DRUG TEST
  - A copy of DAT-13, FEDERAL TESTING NOTIFICATION AND AUTHORIZATION or the random test notification and authorization
2. INFORM THEM THAT YOU ARE WITH FOLEY CARRIER SERVICES, LLC
  - A picture ID (Driver's License or Employee ID issued by your company)
3. COMPLETE DAT-13, FEDERAL TESTING NOTIFICATION AND AUTHORIZATION OR FOR A RANDOM TEST, THE RANDOM TEST NOTIFICATION AND AUTHORIZATION
4. BE SURE THE DONOR HAS THE FOLLOWING ITEMS BEFORE GOING TO THE SITE:
  - A Federal Custody and Control Form (CCF) – with the Blue Foley Carrier Services, LLC label or stamp
5. ADVISE THE INDIVIDUAL TO HAVE A GLASS OF WATER BEFORE LEAVING FOR THE SITE

# Post-Accident Testing

Foley Carrier Services, LLC is available 24 hours a day to assist in determining if an individual requires testing per DOT regulation. During normal business hours (M-F 8:30-5 EST), call (800) 253-5506 press "1" and tell the representative that you have a Post-Accident Emergency.

If it is after hours, call (800) 253-5506 and explain to the answering service that this is a post-accident testing emergency. Leave your name, company name, and the phone number where you can be reached. One of our on-call staff members will be paged immediately and your call will be returned.

**Only conduct a Federal Breath Alcohol Test and a Controlled Substances Test if one of the following criteria has been met:**

- A fatality has occurred.
- The driver received a citation for a moving violation and an injury occurred requiring medical treatment away from the scene of the accident.
- The driver received a citation for a moving violation and a vehicle required towing from the scene of the accident.

**Do not perform Federal Controlled Substances or Alcohol testing if the accident did not meet the criteria listed above.**

**Note:** If the accident did not occur within a reasonable distance of your designated collection site(s) (e.g. driver is four hours away), call Foley Carrier Services, LLC as indi-

cated above for a collection site closer to the location of the individual who requires testing.

Call the collection site and inform them that you require both a Federal Post-Accident Breath Alcohol Test and Federal Drug Screen Collection.

**TIME-FRAMES:** Post-Accident alcohol testing is to be conducted, if at all possible, within **two hours** of the accident. If unable to complete, continue to attempt to have testing completed as soon as practicable. If the Breath Alcohol Test was not completed within eight hours you must cease attempts to have the testing completed.

The Controlled Substances test must be completed as soon as practicable following the accident but cannot be conducted after **32 hours** from the time of the accident. If the test was not completed, you must cease attempts to have the testing completed.

**DOCUMENTATION:** You must document any failure to complete testing, be it the two-hour, eight-hour, or 32-hour window, using FORM DAT-12, FAILURE TO COMPLETE POST-ACCIDENT OR REASONABLE-SUSPICION DRUG AND/OR ALCOHOL TESTS.

Maintain documentation of a failure to complete Federal Post-Accident testing on file, and provide it to FMCSA upon request.

If you believe reasonable-suspicion testing should be conducted—follow the guidelines for reasonable-suspicion testing.

## **24-Hour Hotline Numbers**

**HAVE A DRUG OR ALCOHOL PROBLEM?**

**...GIVE 'EM A CALL**

**1-800-347-8998 (COCAINE ANONYMOUS)**

**1-800-627-3543 (NARCOTICS ANONYMOUS)**

**1-800-344-2666 (ALCOHOLICS ANONYMOUS)**

**1-800-356-9996 (ALANON)**

**For information on our Drug Free Workplace Program,  
or additional poster copies contact:**

**Foley Carrier Services, LLC**

**140 Huyshope Avenue**

**Hartford, CT 06106**

**800-253-5506**

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