

**U.S. Department of Transportation  
(DOT)**

**Federal Motor Carrier Safety Administration  
(FMCSA)**

**49 CFR PART 382  
CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY**

**for**

***City of Alabaster***

**Hereafter referred to as: "City of Alabaster" or "City "**

**Updated: July 6, 2017**

**SECTION A - GENERAL**

This policy and 49 CFR Part 40 Regulations of the U. S. Department Of Transportation Procedures For Transportation Workplace Drug And Alcohol Testing Programs and Urine Specimen Collection Guidelines, Office of Drug and Alcohol Policy and Compliance, U.S. Department of Transportation, are integral parts of this Policy and apply to all covered employees. They may be viewed at <http://www.dot.gov/odapc> Collection procedures, laboratory procedures, MRO review, alcohol testing, record keeping and all other procedural requirements shall adhere to 49 CFR Part 40.

City of Alabaster shall test, in accordance with Federal regulations, employees required to have a Commercial Driver's License (CDL) for the use of controlled substances that violate law or Federal regulation and the misuse of alcohol.

**PURPOSE 382.101**

The purpose of this policy, in addition to meeting Federal regulations, is to establish a program designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

**APPLICABILITY 382.103**

(a) This policy applies to every person of City of Alabaster who operates a commercial motor vehicle in commerce in any State, and is subject to:

- (1) The commercial driver's license requirements of part 383;
- (2) All Drivers Operating Commercial Motor Vehicles for City ; or
- (3) The commercial driver's license requirements of the Canadian National Safety Code.

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

The COVERED EMPLOYEE CERTIFICATE OF RECEIPT contains the name, address, and phone number of the responsible individual(s). The CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY complies with requirements of the Department of Transportation regulations as set forth in 49 CFR § 382 and 49 CFR Part 40. The DER shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and

conformance to human resources policies and procedures; scheduling for types of testing (random, post-accident, reasonable suspicion, etc.); maintaining a locked file system on all test results; and overseeing the referral of employees for evaluation and treatment. City of Alabaster shall ensure that all covered employees are aware of the provisions and coverage of City of Alabaster's CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY and that all employees are notified prior to testing.

## **CITY OF ALABASTER SERVICE AGENT CONTACT INFORMATION**

### **DESIGNATED EMPLOYER REPRESENTATIVE (DER)**

NAME: Candace Connell  
TITLE: Personnel Director  
ADDRESS: 200 Depot Street Alabaster, AL 35007  
PHONE: 205-664-6838  
FAX: 205-664-6853  
E-MAIL: cconnell@cityofalabaster.com  
HOURS WHEN AVAILABLE: Mon.-Fri. 8a.m.-4:30p.m.

### **ALTERNATE DESIGNATED EMPLOYER REPRESENTATIVE (DER)**

NAME: Michelle Lawley

### **MEDICAL REVIEW OFFICER (MRO)**

NAME: Alabama Comp; Dr. Bruce Romeo  
ADDRESS: 2018 Brookwood Medical Center Drive, Suite G-2, Birmingham, AL 35209  
PHONE: 205-877-2667  
FAX: 205-876-2675

### **LABORATORY**

NAME: Alere Toxicology Services  
ADDRESS: 1111 Newton Street, Gretna, LA 70053

### **SUBSTANCE ABUSE PROFESSIONAL (SAP)**

NAME: New Directions Employee Assistance Program  
ADDRESS: 1PO Box 6729, Leawood, KS 66206  
PHONE: 800-624-5544

### **CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)**

NAME: Alabama Comp  
ADDRESS: 2018 Brookwood Medical Center Drive, Suite G-2, Birmingham, AL 35209  
PHONE: 205-877-2667

### **CITY OF ALABASTER'S INDEPENDENT AUTHORITY**

*This CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY sets forth the requirements of 49 CFR Parts 382 and 40. Those areas of the policy that appear in italic print reflect City of Alabaster's independent authority to require additional provisions with regard to drug and alcohol testing procedures. To the extent City state specific non-DOT City Authority Policy supplements, and does not conflict with applicable DOT Regulations, and current agreements, it is to be followed. In the event that DOT Regulations are applicable to the driver's or applicant's particular situation or issue, the DOT Regulations pre-empt conflicting State Laws, City's non-DOT Policies and all other agreements.*

### **PERIOD OF WORKDAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE**

*Safety-Sensitive Functions as covered under 49 CFR Part 382:* In accordance with 49 CFR 382 drivers who possess CDL licenses are subject to DOT regulated alcohol and drug testing at all times from the time a driver

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

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment as required by 49 CFR 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR 393.76);
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

A driver is required to be in compliance with this policy during that period of the workday when they are on-duty performing *safety-sensitive functions* (See Definitions).

## **DRIVER FITNESS FOR DUTY 391.11**

DOT regulations provide that City of Alabaster as a DOT regulated employer makes the final determination of who is a qualified individual to drive a commercial motor vehicle. 49 CFR § 391.11(a). City of Alabaster shall not permit a person to drive a commercial motor vehicle unless the person meets all DOT minimum qualifications and such other more stringent qualifications and requirements relating to safety of operation and employee safety and health as it may decide in its judgment and discretion. City of Alabaster shall use the services of independent Certified Medical Examiners, Occupational Medicine Physicians, Medical Review Officers, as well as other medical and industry professionals to make its final fitness for duty determinations.

## **TESTING PROCEDURES 382.105**

City of Alabaster shall ensure that all alcohol or controlled substances testing conducted under this policy complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol or controlled substances testing are made applicable to City of Alabaster by 382.105.

## **DEFINITIONS 382.107**

Words or phrases used in this policy are defined in Sections 386.2, 390.5 and 40.3 of Federal regulations, except as provided herein.

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

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

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

Alcohol use means the drinking or swallowing of any beverage, liquid mixture, or preparation, (including any medication), containing alcohol. *[Caution: Certain brands and types of cough medicines contain alcohol.]*

CFR means Code of Federal Regulations.

Commerce means:

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

Commercial driver's license Drug and Alcohol Clearinghouse (Clearinghouse) means the FMCSA database that subpart G of 49 CFR Part 382.701-727 requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations. Effective January 6, 2020, the FMCSA will establish a mandatory database and the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

- (1) A verified positive, adulterated, or substituted drug test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to any test required by subpart C of this part;
- (4) An employer's report of actual knowledge, as defined at § 382.107;
- (5) On duty alcohol use pursuant to § 382.205;
- (6) Pre-duty alcohol use pursuant to § 382.207;
- (7) Alcohol use following an accident pursuant to § 382.209; and
- (8) Controlled substance use pursuant to § 382.213;
- (9) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
- (10) A negative return-to-duty test; and
- (11) An employer's report of completion of follow-up testing.

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

- (1) Has gross combination weight rating of 26,001 or more pounds (11,794 or more kilograms) inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds (4,536 kilograms); or
- (2) Has a gross vehicle weight rating of 26,001 or more pounds (11,794 or more kilograms); or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR part 172, Subpart F.

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

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

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

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

Controlled substances mean those substances identified in 40.85.

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

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) Exclusions.

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

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

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653, and 654) in accordance with 49 CFR part 40.

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

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

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

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

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

Positive alcohol test means an alcohol test with an alcohol concentration of greater than or equal to 0.04.

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

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

(a)(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by CTPA (see §40.61(a));

- (2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;
- (3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; Provided that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;
- (4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§40.67(l) and 40.69(g));
- (5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));
- (6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, Sec.40.197 (b));
- (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under Sec. 40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or
- (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
- (9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
- (10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
- (11) Admit to the collector or MRO that you adulterated or substituted the specimen.
- (12) For a breath alcohol test, refusing to sign the certification at Step 2 of the ATF 40.261 (a) (3).

(b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

(c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. 40.191

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

- (1) All time at City of Alabaster's or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by City of Alabaster;
- (2) All time inspecting equipment as required by 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 393.76);
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

- (1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

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

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

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

## **PREEMPTION OF STATE AND LOCAL LAWS 382.109**

(a) Except as provided in paragraph (b) of this section, the Federal regulation requiring this alcohol and controlled substances testing preempts any State or local law, rule, regulation, order to the extent that:

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

(b) This policy, and the Federal regulation requiring it, shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, City of Alabaster, or the general public.

## **OTHER REQUIREMENTS IMPOSED BY City of Alabaster 382.111**

Except as expressly provided in this policy, nothing in the Federal regulation 382 and 49 CFR part 40 shall be construed to affect the authority of City of Alabaster, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

## **REQUIREMENT FOR NOTICE 382.113**

Before performing an alcohol or controlled substances test under the Federal regulation, City of Alabaster shall notify a driver that the alcohol or controlled substances test is required by Federal regulation. City of Alabaster shall not falsely represent that a test is administered under Federal regulation.

## **STARTING DATE FOR TESTING PROGRAMS 382.115**

(a) All domestic-domiciled employers must implement the requirements of this policy the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this policy on the date the employer begins commercial motor vehicle operations in the United States.

## **PUBLIC INTEREST EXCLUSION 382.117**

City of Alabaster shall not use the services of a service agent who is subject to a public interest exclusion (PIE) in accordance with 49 CFR part 40, Subpart R.

## **STAND-DOWN WAIVER PROVISION 382.119**

- (a) City of Alabaster is prohibited from standing employees down, except consistent with a waiver from the Federal Motor Carrier Safety Administration as required under 382.119 of Federal regulations.
- (b) If City of Alabaster seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process shall follow the procedures in 49 CFR 40.21. City of Alabaster must send a written request which includes all of the information required by that section to the Federal Motor Carrier Safety Administrator (or the Administrator's designee), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.
- (c) The final decision whether to grant or deny the application for a waiver will be made by the Administrator or the Administrator's designee.
- (d) After a decision is signed by the Administrator or the Administrator's designee, City of Alabaster will be sent a copy of the decision, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.
- (e) Questions regarding waiver applications should be directed to the Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366-5720.

## **EMPLOYEE ADMISSION OF ALCOHOL AND CONTROLLED SUBSTANCE USE 382.121**

- (a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this policy and 49 CFR part 40, provided that:
  - (1) The admission is in accordance with City of Alabaster's written voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section;
  - (2) The driver does not self-identify in order to avoid testing under the requirements of this part;
  - (3) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and
  - (4) The driver does not perform a safety sensitive function until City of Alabaster is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.
- (b) A qualified voluntary self-identification program or policy must contain the following elements:
  - (1) It prohibits City of Alabaster from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;
  - (2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;
  - (3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;
  - (4) It must ensure that:
    - (i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or
    - (ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and
  - (5) It may incorporate employee monitoring and include non-DOT follow-up testing.

## **DRIVER IDENTIFICATION 382.123**

- (a) For each alcohol test performed, the City shall provide the driver's commercial driver's license number and State of issuance in Step 1, Section B of the Alcohol Testing Form (ATF).
- (b) For each controlled substance test performed under this part, the City shall provide the following information, which must be recorded as follows:
  - (i) The driver's commercial driver's license number and State of issuance in Step 1, section C of the Federal Drug Testing Custody and Control Form (CCF).
  - (ii) The employer's name and other identifying information required in Step 1, section A of the ATF.

### ***EMPLOYEE ASSISTANCE PROGRAM***

*City of Alabaster's employee assistance program (EAP) is a confidential program designed to assist in the identification and resolution of problems associated with employees impaired by alcohol or drugs, or other personal concerns that may adversely affect employee job performance.*

## **SECTION B - PROHIBITIONS**

### **ALCOHOL CONCENTRATION 382.201**

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. If City of Alabaster has actual knowledge that a driver has an alcohol concentration of 0.04 or greater, the driver will not be permitted to perform or continue to perform safety-sensitive functions.

### **ON-DUTY USE 382.205**

No driver shall use alcohol while performing safety-sensitive functions. If City of Alabaster has actual knowledge that a driver is using alcohol while performing safety-sensitive functions, that driver shall not be permitted to perform or continue to perform safety-sensitive functions.

### **PRE-DUTY USE 382.207**

No driver shall perform safety-sensitive functions within four (4) hours after using alcohol. If City of Alabaster has actual knowledge of a driver who has used alcohol within four (4) hours, that driver will not be permitted to perform or continue to perform safety-sensitive functions.

### **USE FOLLOWING AN ACCIDENT 382.209**

No driver required to take a post-accident alcohol test under 382.303 shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.

### **REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST 382.211**

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under 382.303, a random alcohol or controlled substances test required under 382.305, a reasonable suspicion alcohol or controlled substances test required under 382.307, or a follow-up alcohol or controlled substances test required under 382.311. City of Alabaster shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

### **PRE-DUTY DISCLOSURE OF ANY IMPAIRING EFFECT MEDICATION OR SUBSTANCES 382.213**

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical

practitioner, as defined in 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) City of Alabaster, having actual knowledge that a driver has used a controlled substance, shall not permit the driver to perform or continue to perform a safety-sensitive function.

(c) City of Alabaster may require a driver to inform City of Alabaster of any therapeutic drug use.

*All drivers of City of Alabaster are required, as a safety rule and under DOT regulations, to pre-duty disclosure that they are taking ANY impairing affect therapeutic drug, prescription medication (including medical marijuana), over-the-counter medication, mind altering synthetic or designer drugs or substances which may have an effect on their ability to safely operate a commercial motor vehicle or the performance of safety-sensitive duties. It is an essential function of every driver's position at City of Alabaster to be able to work in a constant state of alertness and in a safe manner. If the fact that the driver is taking an impairing effect drug, medication or substance is not disclosed pre-duty by a driver, and the driver tests positive or is determined by the MRO to be a potential safety risk due to a drug, medication or substance, that driver will be subject to discipline, up to and including termination for violation of this safety rule. If disclosure is made, City of Alabaster, in accordance with its authority under 49 CFR Part 391.11(a), reserves the right to send the driver for a Fitness-for-Duty evaluation to evaluate the medication and its possible adverse effects on the driver's ability to safely operate a commercial motor vehicle or the performance of other safety-sensitive duties.*

*In advance of the operation of a commercial motor vehicle, or the performance of other safety-sensitive duties, or testing, drivers are strongly encouraged (and mandated by DOT Regulations) to have their own doctor make an individualized assessment of any safety related risks of the drug, medication or substance which they are taking, providing the doctor a copy of their job description or specific duties, and having the doctor render an opinion on the safety related risks. The driver need not disclose to their supervisor the drug, medication or substance, or the medical condition involved, to fulfill this pre-duty disclosure obligation of this safety policy, but may do so confidentially to the DER. All information provided will be kept separate from personnel files and in a confidential manner by the DER. The MRO will make the final determination on the driver's ability to safely operate a commercial motor vehicle or the safety related risks of any particular drug, medication or substance, although City of Alabaster shall make the final determination on whether the driver is qualified to drive/operate a commercial motor vehicle.*

## **CONTROLLED SUBSTANCES TESTING 382.215**

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. City of Alabaster, having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances, shall not permit the driver to perform or continue to perform safety-sensitive functions.

## **EMPLOYER RESPONSIBILITIES 382.217**

No employer may allow, require, permit or authorize a driver to operate a commercial motor vehicle during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of any of the following events:

- (a) The driver receives a positive, adulterated, or substituted drug test result conducted under part 40;
- (b) The driver receives an alcohol confirmation test result of 0.04 or higher alcohol concentration conducted under part 40;
- (c) The driver refused to submit to a test for drugs or alcohol required under § 382; or
- (d) The driver used alcohol prior to a post-accident alcohol test in violation of § 382.209.

**CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B** Any driver who engages in conduct prohibited by Section B of this policy will be subject to disciplinary action up to and including termination.

## **SECTION C - TESTS REQUIRED**

### **TESTS REQUIRED**

Required testing includes pre-employment (controlled substances required, alcohol at option of City of Alabaster), post-accident, random, and reasonable suspicion. Return-to-duty and follow-up-testing is also required if the City of Alabaster allows a "positive" test employee to return to a safety-sensitive function after the required evaluation by a Substance Abuse Professional and the required rehabilitation.

### ***City RESERVES RIGHT TO CONDUCT NON-DOT DRUG AND ALCOHOL TESTING***

*In addition to drug and alcohol testing conducted by City pursuant to 49 CFR Part 40 and 49 CFR Part 382, The City reserves the independent authority to screen and/or test employees under City's Policy including, but not limited to, laboratory testing and point of collection test (POCT) devices utilizing alternative body specimens including hair, urine and oral fluid (saliva), for the detection of illegal drugs, prescription and over-the-counter medications or substances which have an impairing affect and/or alcohol, taken by those who are considered safety-sensitive employees, as may be permitted and/or restricted by applicable state or local laws or regulations and applicable collective bargaining agreements. The term "illegal use of drugs" includes any mind altering synthetic or designer drugs as well as any controlled or scheduled substance not used in accordance with a health care provider's lawful prescription for the user. These collections will be performed in addition to, and not as a substitute for, DOT regulated tests and these urine specimens will not be poured from or taken from the same specimen collected for a DOT urine test or alcohol test [40.13] and will not be conducted using DOT forms [40.47, 40.227].*

### **PRE-EMPLOYMENT 382.301**

(a) Prior to the first time a driver performs safety-sensitive functions for City of Alabaster, the driver shall undergo testing for controlled substances as a condition prior to being used, unless City of Alabaster uses the exception in paragraph (b) of this section. City of Alabaster shall not allow a driver, who City of Alabaster intends to hire or use, to perform safety-sensitive functions unless City of Alabaster has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver. *City of Alabaster shall require a re-collection of a urine specimen on any pre-employment, return-to-duty and follow-up drug test if the result is negative-dilute. The MRO has authority to direct the re-collection be observed. If the second test result is also negative-dilute, City of Alabaster shall accept the result as a negative test.*

(b) City of Alabaster is not required to administer a controlled substances test required by paragraph (a) of this section if:

- (1) The driver has participated in a controlled substances testing program that meets the requirements of this policy within the previous 30 days; and
- (2) While participating in that program, either--

- (i) Was tested for controlled substances within the past 6 months (from the date of application with City of Alabaster), or
- (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with City of Alabaster); and

- (3) City of Alabaster ensures that no prior employer of the driver of whom City of Alabaster has knowledge has records of a violation of this policy or the controlled substances use rule of another DOT agency within the previous six months.

(c) (1) If City of Alabaster exercises the exception in paragraph (b) of this section, City of Alabaster shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

- (i) Name(s) and address(es) of the program(s).
- (ii) Verification that the driver participates or participated in the program(s).
- (iii) Verification that the program(s) conforms to part 40 of Federal regulations.
- (iv) Verification that the driver is qualified under the rules of this policy, including that the driver has not refused to be tested for controlled substances.
- (v) The date the driver was last tested for controlled substances.
- (vi) The results of any tests taken within the previous six months and any other violations of Section B of this policy.

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

(d) City of Alabaster may, but is not required to, conduct pre-employment alcohol testing under this policy. If City of Alabaster chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

- (1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
- (2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).
- (3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
- (4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of Federal regulation.
- (5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

### **POST-ACCIDENT 382.303**

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, City of Alabaster shall test for alcohol for each of its surviving drivers:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
  - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, City of Alabaster shall test for controlled substances for each of its surviving drivers:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
  - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section:

<u>Type of accident involved</u>	<u>Citation issued to the CMV driver</u>	<u>Test must be performed by City of Alabaster</u>
Human fatality	YES NO	YES YES
Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
Disabling damage to any motor vehicle requiring tow away	YES NO	YES NO

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

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

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

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

(g) (1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by City of Alabaster.

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

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

- (1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or
- (2) An occurrence involving only the loading or unloading of cargo; or
- (3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 571.3) by City of Alabaster unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 177.823.

#### **RANDOM 382.305**

- (a) City of Alabaster shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.
- (b) (1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.
  - (2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 25 percent of the average number of driver positions.
- (i) (1) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.
  - (2) Each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.
  - (3) Each driver selected for testing shall be tested during the selection period.
- (j) (1) To calculate the total number of covered drivers eligible for random testing throughout the year, City of Alabaster, must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in City of Alabaster's random testing pool, and all covered drivers must be in the random pool. If City of Alabaster conducts random testing more often than once per month (e.g., daily, weekly, bi-weekly) City of Alabaster does not need to compute this total number of covered drivers rate more than on a once per month basis.
  - (2) City of Alabaster may use a service agent (e.g., a C/TPA) to perform random selections and covered drivers may be part of a larger random testing pool of covered employees. However, City of Alabaster must ensure that the service agent is testing at the appropriate percentage established for FMCSA and that only covered employees are in the random testing pool
- (k) (1) City of Alabaster shall ensure that random alcohol and controlled substances tests conducted under this policy are unannounced.
  - (2) City of Alabaster shall ensure that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.
- (l) City of Alabaster shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, City of Alabaster shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.
- (m) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.
- (n) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for City of Alabaster, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.
- (o) If City of Alabaster is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, City of Alabaster may--
  - (1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or
  - (2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which City of Alabaster is subject.

## **REASONABLE SUSPICION 382.307**

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

(b) City of Alabaster shall require a driver to submit to a controlled substances test when there is reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning controlled substances. City of Alabaster's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or an official of City of Alabaster who is trained in accordance with 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver. *If the employee insists on driving, the proper local enforcement authority should be notified that an employee, who we believe may be under the influence of a drug or alcohol, is leaving City premises driving a motor vehicle.*

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

(e) (1) If an alcohol test required by DOT/FMCSA regulations is not administered within two (2) hours following the determination under paragraph (a) of this section, City of Alabaster shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by DOT/FMCSA regulations is not administered within eight (8) hours following the determination under paragraph (a) of this section, City of Alabaster shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under DOT/FMCSA regulations, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall City of Alabaster permit the driver to perform or continue to perform safety-sensitive functions, until:

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

(ii) Twenty four (24) hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this policy concerning the use of alcohol.

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

(f) A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or an official of City of Alabaster who made the observations, with 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

## **RETURN-TO-DUTY 382.309**

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, Subpart O.

## **FOLLOW-UP 382.311**

The requirements for follow-up testing must be performed in accordance with 49 CFR part 40, Subpart O.

## **SECTION D - HANDLING OF TEST RESULTS, RECORD RETENTION AND CONFIDENTIALITY**

### **RETENTION OF RECORDS 382.401**

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

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

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

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

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

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

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

(c) Types of records. The following specific records shall be maintained. “Documents generated” are documents that may have to be prepared under a requirement of Federal regulations and this policy. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

- (i) Collection logbooks, if used,
- (ii) Documents relating to the random selection process,
- (iii) Calibration documentation for evidential breath testing devices,
- (iv) Documentation of breath alcohol technician training,
- (v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests,
- (vi) Documents generated in connection with decisions on post-accident tests,

- (vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing and
- (viii) A copy of each annual calendar year summary as required by 382.403.

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

- (i) City of Alabaster's copy of the alcohol test form, including the results of the test,
- (ii) City of Alabaster's copy of the controlled substances test chain of custody and control form,
- (iii) Documents sent by the MRO to City of Alabaster, including those required by part 40, Subpart G,
- (iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this policy and
- (v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this policy.
- (vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that City of Alabaster:
  - (A) Must obtain in connection with the exception contained in 382.301 of this policy, and
  - (B) Must obtain as required by 382.413.

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

(4) Records related to evaluations:

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

(5) Records related to education and training:

- (i) Materials on alcohol misuse and controlled substances use awareness, including a copy of City of Alabaster's policy on alcohol misuse and controlled substances use,
- (ii) Documentation of compliance with requirements of 382.601, including the driver's signed receipt of education materials,
- (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;
- (iv) Documentation of training for breath alcohol technicians as required by 40.213(a), and
- (v) Certification that any training conducted under these Federal Regulations complies with requirements for such training.

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

- (i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, and consortia and/or with a C/TPA,
- (ii) Names and positions of officials and their role in City of Alabaster's alcohol and controlled substances testing program(s),
- (iii) Semi-annual laboratory statistical summaries of urinalysis required by 40.111 (a) of Federal regulations and
- (iv) City of Alabaster's alcohol and controlled substances testing policy and procedures.

(d) Location of records. All records required by this policy shall be maintained as required by 390.31 and shall be made available for inspection at City of Alabaster's principal place of business within two business days after a request has been made by an authorized representative of the FMCSA.

## **REPORTING OF RESULTS IN A MANAGEMENT INFORMATION SYSTEM 382.403**

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

(b) If City of Alabaster is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report City of Alabaster's annual calendar year summary information, City of Alabaster shall prepare and submit the report to the FMCSA by March 15 of that year. City of Alabaster shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. City of Alabaster must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at Sec. 40.26 and appendix H to part 40). City of Alabaster may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on the electronic version of the form, see:

<http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm>.

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. City of Alabaster shall ensure the accuracy and timeliness of each report submitted by City of Alabaster or a consortium.

(d) If City of Alabaster has a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for City of Alabaster), then that employee shall be counted only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. City of Alabaster may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (e.g., Consortia/Third party administrator as defined in 49 CFR 382.107) may prepare the MIS report on behalf of City of Alabaster. However, a City official (e.g., Designated employer representative) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

#### **ACCESS TO FACILITIES AND RECORDS 382.405**

(a) Except as required by law or expressly authorized or required, City of Alabaster shall not release driver information that is contained in records required to be maintained under 382.401.

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

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

(d) City of Alabaster and each service agent who maintains records for an employer, must make available copies of all results for DOT alcohol and/or controlled substances testing conducted by the City and any other information pertaining to the City's alcohol misuse and/or controlled substances use prevention program when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over City of Alabaster or any of its drivers.

(e) When requested by the National Transportation Safety Board as a part of a crash investigation:

- (i) City of Alabaster must disclose information related to the City of Alabaster's administration of a post-accident alcohol and/or a controlled substances test administered following the crash under investigation; and
- (ii) FMCSA will provide access to information in the Clearinghouse (once established) concerning drivers who are involved with the crash under investigation.

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

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

(h) City of Alabaster may disclose information required to be maintained under this policy pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this policy (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought).

(i) City of Alabaster shall release information regarding a driver's records as directed by the specific written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent as outlined in 49 CFR part 40.321(b).

#### **MEDICAL REVIEW OFFICER NOTIFICATIONS TO City of Alabaster 382.407**

The medical review officer shall report the results of controlled substances tests to City of Alabaster in accordance with the requirements of 49 CFR part 40, Subpart G.

#### **MEDICAL REVIEW OFFICER RECORD RETENTION FOR CONTROLLED SUBSTANCES 382.409**

(a) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of five (5) years for verified positive controlled substances test results.

(b) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of one (1) year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer (MRO as defined in § 40.3) or a consortium/third party administrator (C/TPA as defined in 382.107), and no MRO or C/TPA may release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a MRO or a C/TPA from releasing to the employer, the Clearinghouse (once established), or to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances and alcohol testing program under this part, the information delineated in part 40, subpart G.

#### **EMPLOYER NOTIFICATIONS 382.411**

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

(b) The designated employer representative (DER) shall make reasonable efforts to contact and request each driver who submitted a specimen under this policy, regardless of the driver's employment status, to contact and

discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

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

#### **INQUIRIES FOR ALCOHOL AND CONTROLLED SUBSTANCES INFORMATION FROM PREVIOUS EMPLOYERS 382.413**

(a) City of Alabaster must request alcohol and controlled substances information from previous employers in accordance with the requirements of § 40.25, except that the City must request information from all DOT-regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years.

(b) As of January 6, 2023, employers must use the Drug and Alcohol Clearinghouse in accordance with § 382.701(a) to comply with the requirements of § 40.25 of this title with respect to FMCSA-regulated employers. **Exception:** When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the previous employer's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5).

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the City must request the alcohol and controlled substances information required under this section and § 40.25 directly from those employers regulated by a DOT Agency other than FMCSA.

#### **NOTIFICATION TO EMPLOYERS OF A CONTROLLED SUBSTANCES OR ALCOHOL TESTING PROGRAM VIOLATION 382.415**

Each person holding a commercial driver's license and subject to the DOT controlled substances and alcohol testing requirements under § 382 who has violated the alcohol and controlled substances prohibitions under part 40 or under § 382 without complying with the requirements of part 40, subpart O, must notify in writing all current employers of such violation(s). The driver is not required to provide notification to the employer that administered the test or documented the circumstances that gave rise to the violation. The notification must be made before the end of the business day following the day the employee received notice of the violation, or prior to performing any safety-sensitive function, whichever comes first.

### **SECTION E - CONSEQUENCES FOR DRIVERS ENGAGING IN SUBSTANCE USE-RELATED CONDUCT**

#### **REMOVAL FROM SAFETY-SENSITIVE FUNCTION 382.501**

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

(b) City of Alabaster shall not permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if City of Alabaster has determined that the driver has violated this policy.

(c) For the purposes of DOT/FMCSA regulations, commercial motor vehicle means a commercial motor vehicle in commerce as defined in 382.107 and a commercial motor vehicle in interstate commerce as defined in part 390.

## **REQUIRED EVALUATION AND TESTING 382.503**

No driver who has engaged in conduct prohibited by Section B of this policy shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O. City of Alabaster shall not permit a driver who has engaged in conduct prohibited by Section B of this policy to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O.

## **OTHER ALCOHOL-RELATED CONDUCT 382.505**

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

(b) Except as provided in paragraph (a) of this section, City of Alabaster shall not take any action under this policy against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit City of Alabaster with authority independent of this policy from taking any action otherwise consistent with law.

*The use or possession of alcoholic beverages while on City of Alabaster's property, or in any of City of Alabaster's vehicle, or on City of Alabaster's time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.*

*Employees who are not at work, but who could be called out are expected to be fit for duty upon reporting for work. If an employee is under the influence of alcohol, the employee must notify their City of Alabaster (supervisor when contacted). Failure to advise City of Alabaster of alcohol consumption may result in disciplinary action. If a covered employee is perceived to be under the influence of alcohol when reporting to work after being called in, the employee's supervisor must be notified.*

*The supervisor must objectively observe the employee's behavior and if possible, substantiate the behavior with a second supervisor. Supervisors must have received training in alcohol and/or substance abuse detection. The supervisor must follow procedures outlined in the policy. If a determination to test for reasonable suspicion is made, the employee is immediately removed from safety-sensitive duties and the DER is contacted.*

## **PENALTIES 382.507**

City of Alabaster and/or driver who violates the FMCSA requirements of § 382 and/or 49 CFR part 40 shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. Section 521(b).

## **SECTION F – ALCOHOL MISUSE AND CONTROLLED SUBSTANCES USE INFORMATION, TRAINING, AND REFERRAL**

## **CITY OF ALABASTER'S OBLIGATION TO PROMULGATE A POLICY ON THE MISUSE OF ALCOHOL AND USE OF CONTROLLED SUBSTANCES. 382.601**

(a) *General requirements.* City of Alabaster shall provide educational materials that explain the requirements of this policy and City of Alabaster's policies and procedures with respect to meeting the FMCSA alcohol and drug testing requirements.

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

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

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

- (1) The identity of the person designated by City of Alabaster to answer driver questions about the materials; (*COVERED EMPLOYEE CERTIFICATE OF RECEIPT*)
- (2) The categories of drivers who are subject to the provisions of this policy; (*APPLICABILITY*)
- (3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with the policy; (*PERIOD OF THE WORK DAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE*)
- (4) Specific information concerning driver conduct that is prohibited by this policy; (*SECTION B - PROHIBITIONS*)
- (5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this policy including post-accident testing under 382.303(d); (*SECTION C - TESTS REQUIRED*)
- (6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by 382.303(d); (*49 CFR part 40*)
- (7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this policy; (*REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST*)
- (8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences; (*DEFINITIONS*)
- (9) The consequences for drivers found to have violated Section B of this policy, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under 49 CFR part 40, Subpart O; (*CERTIFICATE OF RECEIPT, CONSEQUENCES OF PROHIBITED CONDUCT; and CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B, and SECTION E*)
- (10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04; (*OTHER ALCOHOL-RELATED CONDUCT 382.505*)
- (11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management;

(c) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse (once established):

- (1) A verified positive, adulterated, or substituted drug test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to any test required by subpart C;
- (4) An employer's report of actual knowledge, as defined at § 382.107;
- (5) On-duty alcohol use pursuant to § 382.205;
- (6) Pre-duty alcohol use pursuant to § 382.207;
- (7) Alcohol use following an accident pursuant to § 382.209; and
- (8) Controlled substance use pursuant to § 382.213;
- (9) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
- (10) A negative return-to-duty test; and
- (11) An employer's report of completion of follow-up testing.

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

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

### **TRAINING FOR SUPERVISORS 382.603**

City of Alabaster shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

### **REFERRAL, EVALUATION, AND TREATMENT 382.605**

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

## **SECTION G – REQUIREMENTS AND PROCEDURES FOR IMPLEMENTATION OF THE COMMERCIAL DRIVER’S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE**

The purpose of City of Alabaster Policy update in advance of the Compliance Date of January 6, 2020 as mandated by § 382.601: 1) is part of the City 's efforts to meet its *Employer Obligation to Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substance*; 2) to publish educational materials to drivers about the Clearinghouse and other regulatory changes contained in the Final Rule issued December 5, 2016; and 3) to notify drivers that drug and alcohol test information will be reported to the Clearinghouse beginning January 6, 2020 so as to encourage drivers to seek substance abuse treatment if they currently have a problem with the misuse of alcohol and/or use of controlled substance(s).

### **DRUG AND ALCOHOL CLEARINGHOUSE 382.701**

#### **(a) *Pre-employment query required.***

(1) Employers must not employ a driver subject to controlled substances and alcohol testing to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance, in violation of § 382.213.

(2) City of Alabaster must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

#### **(b) *Annual query required.***

(1) City of Alabaster must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under 382, to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of 382.701, City of Alabaster may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell City of Alabaster whether there is information about the individual driver in the Clearinghouse, but will not release that information to City of Alabaster. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of 382.701, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of 382.701.

(c) *Employer notification.* If any information described in paragraph (a) of 382.701 is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

(d) *Prohibition.* No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in violation of § 382.213, except where a query of the Clearinghouse demonstrates:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.

(2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with § 40.307 and specified in the SAP report required by § 40.311, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

(e) *Recordkeeping required.* Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

## **DRIVER CONSENT TO PERMIT ACCESS TO INFORMATION IN THE CLEARINGHOUSE 382.703**

(a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

(b) Before City of Alabaster may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:

- (1) A verified positive, adulterated, or substituted controlled substances test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to a test in violation of § 382.211;
- (4) An employer's report of actual knowledge, as defined at § 382.107, of:

- (i) On duty alcohol use pursuant to § 382.205;
- (ii) Pre-duty alcohol use pursuant to § 382.207;
- (iii) Alcohol use following an accident pursuant to § 382.209; and
- (iv) Controlled substance use pursuant to § 382.213;

- (5) A SAP report of the successful completion of the return-to-duty process;
- (6) A negative return-to-duty test; and
- (7) An employer's report of completion of follow-up testing.

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of 382.703.

(d) A driver granting consent under 382.703 must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with § 382.701(a)(2) or (b)(3).

(e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with § 382.701(c).

## **REPORTING TO THE CLEARINGHOUSE 382.705**

**(a) MROs.**

- (1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:
  - (i) Verified positive, adulterated, or substituted controlled substances test results;
  - (ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).
- (2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:
  - (i) Reason for the test;
  - (ii) Federal Drug Testing Custody and Control Form specimen ID number;
  - (iii) Driver's name, date of birth, and CDL number and State of issuance;
  - (iv) Employer's name, address, and USDOT number, if applicable;
  - (v) Date of the test;
  - (vi) Date of the verified result; and
  - (vii) *Test result.* The test result must be one of the following:
    - (A) Positive (including the controlled substance(s) identified);
    - (B) Refusal to test: adulterated;
    - (C) Refusal to test: substituted; or
    - (D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with § 40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.
- (3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

**(b) Employers.**

- (1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:
  - (i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
  - (ii) A negative return-to-duty test result;
  - (iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;

- (iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and
- (v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title.

(2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:

- (i) Reason for the test;
- (ii) Driver's name, date of birth, and CDL number and State of issuance;
- (iii) Employer name, address, and USDOT number;
- (iv) Date of the test;
- (v) Date the result was reported; and
- (vi) *Test result.* The test result must be one of the following:
  - (A) Negative (only required for return-to-duty tests administered in accordance with § 382.309);
  - (B) Positive; or
  - (C) Refusal to take a test.

(3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:

- (i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
- (ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
- (iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the CTPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and
- (iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.

(4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at § 382.107, of:

- (i) On-duty alcohol use pursuant to § 382.205;
- (ii) Pre-duty alcohol use pursuant to § 382.207;
- (iii) Alcohol use following an accident pursuant to § 382.209; and
- (iv) Controlled substance use pursuant to § 382.213.

(5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:

- (i) Driver's name, date of birth, CDL number and State of issuance;
- (ii) Employer name, address, and USDOT number, if applicable;
- (iii) Date the employer obtained actual knowledge of the violation;
- (iv) Witnesses to the violation, if any, including contact information;
- (v) Description of the violation;
- (vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to § 382.121), correspondence, or other documentation; and
- (vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.

(6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.

(c) *C/TPAs*. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: an employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of 382.705.

(d) *SAPs*.

(1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:

- (i) SAPs name, address, and telephone number;
- (ii) Driver's name, date of birth, and CDL number and State of issuance;
- (iii) Date of the initial substance-abuse-professional assessment; and
- (iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under 382.

(2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of 382.703 by the close of the business day following the determination that the driver has completed the return-to-duty process.

(e) *Reporting truthfully and accurately*. Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

Reporting Entities and Circumstances	
Reporting Entity	When Information Will Be Reported to Clearinghouse
Prospective/Current Employer of CDL Driver	<ul style="list-style-type: none"> <li>— An alcohol confirmation test with a concentration of 0.04 or higher</li> <li>— Refusal to test (alcohol) as specified in 49 CFR 40.261</li> <li>— Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191</li> <li>— Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.</li> <li>— Negative return-to-duty test results (drug and alcohol testing, as applicable)</li> <li>— Completion of follow-up testing</li> </ul>
Service Agent acting on behalf of Current Employer of CDL Driver	<ul style="list-style-type: none"> <li>— An alcohol confirmation test with a concentration of 0.04 or higher</li> <li>— Refusal to test (alcohol) as specified in 49 CFR 40.261</li> <li>— Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191</li> <li>— Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.</li> <li>— Negative return-to-duty test results (drug and alcohol testing, as applicable)</li> <li>— Completion of follow-up testing</li> </ul>
MRO	<ul style="list-style-type: none"> <li>— Verified positive, adulterated, or substituted drug test result</li> <li>— Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191</li> </ul>
SAP	<ul style="list-style-type: none"> <li>— Identification of driver and date the initial assessment was initiated</li> <li>— Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing</li> </ul>

**NOTICE TO DRIVERS OF ENTRY, REVISION, REMOVAL, OR RELEASE OF INFORMATION**  
**382.707**

(a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.

(b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.

(c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

## **DRIVERS' ACCESS TO INFORMATION IN THE CLEARINGHOUSE 382.709**

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

### **CLEARINGHOUSE REGISTRATION 382.711**

(a) *Clearinghouse registration required.* Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.

(b) *Employers.*

(1) Employer Clearinghouse registration must include:

- (i) Name, address, and telephone number;
- (ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and
- (iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.

(2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.

(3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse.

Employers must update any changes to this information within 10 days.

(c) *MROs and SAPs.* Each MRO or SAP must provide the following to apply for Clearinghouse registration:

- (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;
- (2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and
- (3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) *C/TPAs and other service agents.* Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:

- (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and
- (2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.
- (3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of 382.711 annually.

### **DURATION, CANCELLATION, AND REVOCATION OF ACCESS 382.713**

(a) *Term.* Clearinghouse registration is valid for 5 years, unless cancelled or revoked.

(b) *Cancellation.* FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.

(c) *Revocation.* FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

## **AUTHORIZATION TO ENTER INFORMATION INTO THE CLEARINGHOUSE 382.717**

(a) *C/TPAs*. No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.

(b) *SAPs*. A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

## **PROCEDURES FOR CORRECTING INFORMATION IN THE DATABASE 382.17**

(a) Petitions limited to inaccurately reported information.

(1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.

(2) *Exceptions*.

(i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

(ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in § 382.705(b)(5).

(iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in § 382.705(b)(3).

(b) *Petition*. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:

(1) The petitioner's name, address, telephone number, and CDL number and State of issuance;

(2) Detailed description of the basis for the allegation that the information is not accurate; and

(3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(c) *Submission of petition*. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE, Washington, D.C. 20590.

(d) *Notice of decision*. Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.

(e) *Request for expedited treatment*.

(1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.

(2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.

(f) *Administrative review*.

(1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.

(2) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the

Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

(3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.

(4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

(g) *Subsequent notification to employers.* When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

## **AVAILABILITY AND REMOVAL OF INFORMATION 382.719**

(a) Driver information not available. Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:

- (1) The SAP reports to the Clearinghouse the information required in § 382.705(d);
- (2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;
- (3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title; and
- (4) Five years have passed since the date of the violation determination.

(b) Driver information remains available. Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) *Exceptions.*

- (1) Within 2 business days of granting a request for removal pursuant to § 382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.
- (2) Information about a particular driver's drug or alcohol violation may be removed in accordance with § 382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) *Driver information remains available.* Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

## **FEES 382.721**

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. **Exception:** No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

## **UNAUTHORIZED ACCESS OR USE PROHIBITED 382.723**

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.

c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at § 382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

## **ACCESS BY STATE LICENSING AUTHORITIES 382.725**

(a) In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

## **PENALTIES 382.727**

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

## **INVESTIGATION AND INQUIRIES 391.23**

(e) (4) As of January 6, 2023, employers subject to § 382.701(a) of § 382 must use the Drug and Alcohol Clearinghouse to comply with the requirements of this section with respect to FMCSA-regulated employers.

(i) *Exceptions.*

(A) If an applicant who is subject to follow-up testing has not successfully completed all follow-up tests, the employer must request the applicant's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5) of Part 40.

(B) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT mode other than FMCSA, the employer must request alcohol and controlled substances information required under this section directly from those employers regulated by a DOT mode other than FMCSA.

(ii) *[Reserved]*

(f) (1) A prospective motor carrier employer must provide to the previous employer the driver's consent meeting the requirements of § 40.321(b) of Part 40 for the release of the information in paragraph (e) of 391.23. If the driver refuses to provide this consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(2) If a driver refuses to grant consent for the prospective motor carrier employer to query the Drug and Alcohol Clearinghouse in accordance with paragraph (e)(4) of 391.23, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle.

## Appendix A City of Alabaster

### Commercial Motor Vehicle Driver's

#### Certificate of Compliance With DOT Cell-Phone/Texting Bans

**MOTOR CARRIERS:** The restrictions in 49 CFR Part 392 on using a mobile telephone or texting while driving apply to every operator of a "commercial motor vehicle" as defined in Section 390.5, including interstate vehicles weighing or rated at 10,001 pounds or more, vehicles placarded for hazardous materials, and certain vehicles designed or used for more than 8 passengers (including the driver). In-state operations of vehicles placarded for hazardous materials are also subject to the restrictions. Other in-state-only operations may also be subject, depending on state rules.

**DRIVERS:** Part 392 of the Federal Motor Carrier Safety Regulations contains restrictions on texting and the use of hand-held mobile telephones while driving a commercial motor vehicle (CMV), including the following:

- **Texting ban (392.80):** You may not manually enter text into or read text from an electronic device while driving a CMV. This includes e-mailing, text messaging, using the internet, pressing more than one button to start or end a phone call, or any other form of text retrieval or entry for communication purposes.
- **Hand-held cell-phone ban (392.82):** You are prohibited from using a hand-held cell phone while driving a CMV. This includes talking on a phone while holding it in your hand (including push-to-talk), pressing more than a single button to dial or answer a cell phone, or leaving your normal, seated driving position to reach for a cell phone.

*Except as prohibited under company policy*, you are allowed to use a hands-free phone, a CB radio, a navigation system, a two-way radio, a music player, or a fleet management system for purposes other than texting. Texting and hand-held cell-phone use are **only** allowed if you need to contact emergency services or if you have stopped in a safe location off the road.

**Penalties (383.51, 391.15, 49 CFR 386):** CDL and non-CDL drivers can be disqualified for 60 up to 120 days and/or face fines of up to \$2,750 for each violation. Company can be fined up to \$11,000 for each violation.

**It is understood that the above information is being provided to the employee in an effort by City of Alabaster to show good faith efforts to achieve compliance with the above-cited regulations. (49 CFR § 386.81)**