

UNIVERSITY OF NOTRE DAME

COMMERCIAL MOTOR VEHICLE POLICY

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I. PURPOSE

In compliance with Department of Transportation (“DOT”) regulations published in 49 CFR Parts 40 and 325 through 399, applicable to the operation of vehicles that meet certain weight, use and capacity criteria, the University of Notre Dame has adopted this Commercial Motor Vehicle Policy. This Policy is intended to provide direction and assistance to departments, supervisors and employees affected by DOT regulations, and to reaffirm the University’s intent to comply with all applicable state and federal statutes and regulations. Consistent with 49 CFR § 390.3(d), the University may require and enforce policies relating to safety of vehicle operations, and employee safety and health, that are more stringent than the requirements of DOT regulations.

Definitions of terminology used in this Policy are listed in the Appendix to this Policy.

II. SCOPE

- A. This Policy outlines certain responsibilities and requirements for the operation of Commercial Motor Vehicles. A Commercial Motor Vehicle (“CMV”) is defined at 49 CFR § 390.5 as any self-propelled or towed vehicle used on a highway (any roadway or passage which may be available to public transportation at any time, whether on private or public property) in interstate or intrastate commerce to transport passengers or property, when the vehicle:
1. Has a gross vehicle weight rating or gross combination weight (including gross combination weight trailers), or rating of 10,001 or more pounds.
 2. Regardless of weight, is designed or used to transport more than 8 passengers (including the driver), for compensation.
 3. Regardless of weight, is designed or used to transport more than 15 passengers (including the driver), and is not used to transport passengers for compensation.
 4. Regardless of weight, is used in the transportation of materials found by the Secretary of Transportation to be hazardous under 49 USC § 5103 and transported in a quantity requiring the motor vehicle to be placarded under 49 CFR Part 72, Subpart F (49 CFR § 172.500).
- B. Under 49 CFR § 383.5, when a Commercial Motor Vehicle meets any of the following criteria all drivers of these vehicles must obtain a special license called a Commercial Driver’s License (“CDL”):

1. Has a gross combination weight rating of 26,001 or more pounds, inclusive of towed units, with a gross vehicle weight rating of more than 10,000 pounds.
 2. Has a gross vehicle weight rating of 26,001 or more pounds.
 3. Is designed to transport 16 or more passengers, including the driver.
 4. Is of any size and is used in the transportation of hazardous materials.
- C. When a person is employed for the primary purpose of operating a vehicle which weighs between 16,000 and 26,000 lbs., he or she is required to possess a Chauffeur's License. Such a license is not required if operation of such a vehicle is incidental to the person's employment responsibilities.
- D. Students are not authorized to operate a Commercial Motor Vehicle under any circumstances.

III. RESPONSIBILITIES

A. Transportation Services:

Transportation Services will be responsible for the overall management of the DOT compliance program. Transportation Services will work with the Human Resources and Risk Management and Safety departments, as well as with departmental supervisors and individual drivers, to facilitate the University's compliance with the regulations addressed by this policy.

In addition to the overall management of the DOT compliance effort, Transportation Services is responsible for the following duties:

- Create and maintain a separate policy for systematic maintenance of Commercial Motor Vehicles.
- Maintain Commercial Motor Vehicles per the maintenance policy.
- Conduct Annual (Periodic) Inspections on Commercial Motor Vehicles and maintain related records as required by DOT regulations.
- Conduct DOT Road Tests for potential drivers of Commercial Motor Vehicles and forward completed documentation to Risk Management and Safety.
- Produce and install proper DOT identification markings on Commercial Motor Vehicles.
- Audit Driver Vehicle Inspection Report (DVIR) forms to monitor the compliance of departments and drivers with completion and maintenance of required forms per DOT regulations.
- Meet with potential drivers of Commercial Motor Vehicles to conduct DOT training and to create a Driver Qualification File for new drivers.

- Conduct DOT training for drivers of Commercial Motor Vehicles and their supervisors.
- Work with Human Resources, Risk Management and Safety and departmental supervisors to review cases of non-compliance.

B. Risk Management and Safety:

Risk Management and Safety is responsible for the following duties:

- Obtain Motor Vehicle Record (MVR) checks on potential drivers of Commercial Motor Vehicles.
- Conduct Annual Review/Driver Certification of current drivers of Commercial Motor Vehicles, which includes annual check of MVR and completion of driver certification form
- Regularly notify drivers of Commercial Motor Vehicles of the need to obtain required DOT physicals.
- Regularly notify drivers of Commercial Motor Vehicles of the need to renew their drivers' licenses.
- Notify Transportation Services and supervisor of a driver's non-compliance with this policy.
- Maintain Driver Qualification Files for drivers of Commercial Motor Vehicles.

C. Human Resources:

Human Resources is responsible for the following duties:

- Management and administration of the Controlled Substance and Alcohol Use Testing program, which applies to drivers of a Commercial Motor Vehicle requiring a CDL and which is detailed in Section VIII.
- Maintain testing records.
- Notify Transportation Services and supervisor of a driver's non-compliance with this policy.

D. Supervisor / Department:

Supervisors are responsible for the following duties:

- Notify Transportation Services if the need arises to "qualify" an employee as a driver to operate a Commercial Motor Vehicle.
- Notify Human Resources if an open position requires the employee to operate a Commercial Motor Vehicle.
- Work with Risk Management and Safety to validate that all employees who are drivers of Commercial Motor Vehicles have all required DOT physical forms and drivers licenses.

- Work with Risk Management and Safety to facilitate and confirm the completion of the Annual Review/Driver Certification in a timely manner by all employees who are drivers of Commercial Motor Vehicles.
- Confirm that drivers of a Commercial Motor Vehicle are completing and submitting a DVIR every time they operate a Commercial Motor Vehicle.
- Maintain DVIRs for 90 days.
- Review DVIRs daily to confirm that Commercial Motor Vehicles are operating in a safe condition.
- Work with Transportation Services to facilitate maintenance and repair of all Commercial Motor Vehicles as required to keep the vehicles in a safe operating condition.
- Attend DOT training when scheduled by Transportation Services.
- Work with Human Resources to facilitate compliance with the Controlled Substance and Alcohol Use Testing program, which applies to drivers of a Commercial Motor Vehicle requiring a CDL and which is detailed in Section VIII.
- Notify Transportation Services of a driver's non-compliance with this policy.
- Notify Transportation Services of change in "status" of drivers of Commercial Motor Vehicles (death, retirement, no longer operating CMVs).
- Collect completed driver certification forms on an annual basis, as required by the Annual Review/Driver Certification process, from all Commercial Motor Vehicle drivers and submit the completed forms to Risk Management and Safety.

E. Drivers:

Drivers are responsible for the following duties:

- Operate all Commercial Motor Vehicles in a safe and professional manner in compliance with all DOT and University regulations and requirements, including the DOT prohibitions against "texting while driving" and "using a hand-held mobile telephone while driving." Under 49 CFR § 390.5, the following definitions apply:

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service, as defined in the regulations of the Federal Communications Commission, 47

CFR 20.3. It does not include two-way or Citizens Band Radio services.

Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

(i) Inputting, selecting, or reading information on a global positioning system or navigation system; or

(ii) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(iii) Using a device capable of performing multiple functions (e.g., fleet management systems, dispatching devices, smart phones, citizen band radios, music players, etc.) for a purpose that is not otherwise prohibited in this part.

Use a hand-held mobile telephone means:

(1) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(2) Dialing or answering a mobile telephone by pressing more than a single button; or

(3) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt that is installed in accordance with 49 CFR 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

- Conduct daily inspections of Commercial Motor Vehicles and submit a DVIR (Drivers Vehicle Inspection Report) to supervisor at the end of each shift.

- Report to supervisor any charge, citation, or conviction regarding the violation of any law regarding the operation or use of any type of motor vehicle. The notification must be made before the end of the business day following the driver's receipt of the charge, citation, or conviction.
- Report to supervisor any revocation, cancellation, lost privilege, disqualification, or suspension of any driver's license of the employee. The notification must be made before the end of the business day following the driver's receipt of the notice of a revocation, cancellation, lost privilege, disqualification, or suspension.
- The use of non-prescribed drugs and alcohol while operating a Commercial Motor Vehicle is prohibited and driver must comply at all times with the requirements of this University policy, including Drug and Alcohol section, VIII.F.
- Submit a sample for drug or alcohol testing when requested to do so by a supervisor pursuant to this policy.
- Maintain a log of "hours of service" (when required).
- Carry at all times while on duty a copy of the DOT Physical certificate.
- Maintain up to date DOT Physicals and valid driver's licenses.
- Send copy of DOT physical to State of Indiana to maintain valid CDL (CDL holders and Indiana resident drivers only).
- Comply with all other University policies that pertain to the use of vehicles (Vehicle Usage Policy for Notre Dame Employees).
- Complete the driver certification form on an annual basis as required by the Annual Review/Driver Certification process and submit the completed form to supervisor.

IV. PHYSICAL QUALIFICATIONS AND EXAMINATIONS (49 CFR PART 39, SUBPART E, § 391.41)

- A. Employees who operate Commercial Motor Vehicles must submit to required DOT physicals upon their initial hiring and then as needed for compliance, thereafter. Failure to do so will result in the loss of the employee's qualification to operate such a vehicle. Only physicals which are completed at the University's designated medical facility(s) will be accepted as valid DOT physicals (contact Risk Management and Safety for information regarding the designated medical facility).
- B. Transportation Services will provide to the applicant the necessary information to set up an appointment during the hiring process. For subsequent physicals, Risk Management and Safety will send out a reminder to the employee's supervising department with the name, location, and phone number of the medical facility, along with the deadline, and will instruct them to get the physical completed.

- C. The University will select a medical provider to conduct physicals following DOT protocol (see physical form) and will send the results to Risk Management and Safety. The actual physical forms used may change as regulations change.

V. VEHICLE MAINTENANCE (49 CFR, PART 396)

There are three different types of vehicle maintenance inspections which shall be conducted on all Commercial Motor Vehicles. They are as follows:

- A. Systematic Maintenance - Transportation Services will perform routine maintenance and repairs on each Commercial Motor Vehicle to maintain the vehicle in a safe operating condition in accordance with its separate policy for systematic maintenance.
- B. Daily Inspections - Drivers of every Commercial Motor Vehicle will conduct a daily vehicle inspection before operating the vehicle. At the end of the driver's shift (or when the driver is finished using the Commercial Motor Vehicle for the shift), the driver will complete a Driver Vehicle Inspection Form (DVIR). Blank DVIR Books are furnished to departments by Transportation Services. DVIR Books must be placed in each Commercial Motor Vehicle by the department that operates the Commercial Motor Vehicle. Drivers must promptly submit copies of each DVIR form the driver completes to his/her supervisor for review. The original (top copy) of the DVIR must remain in DVIR Book for audit purposes. DVIRs will be kept on file in each driver's respective department. On a periodic basis, Transportation Services will ask the departmental supervisors for the DVIRs that are on file to verify the University's compliance with maintenance and inspection requirements.
- C. Annual Inspections - All Commercial Motor Vehicles will be given an annual inspection by Transportation Services. This inspection will be a more detailed safety inspection than the daily inspections conducted by drivers. The individual departments will be notified by Transportation Services to set up these appointments for annual inspections.

VI. HOURS OF SERVICE OF DRIVERS (49 CFR, PART 395)

Log books must be kept by drivers who drive Commercial Motor Vehicles a distance greater than 100 air-miles (CDL drivers) away from the University and/or are on duty more than 12 hours. (Non-CDL drives may use this exemption for distances under 150 air-miles from campus with some stipulations. See Transportation Services for clarification of this rule.) This log involves the recording of the driver's duty status for each twenty-four (24) hour period. When drivers are required to use a log, they are expected to obtain a form (or log), before the trip begins, from their supervisor. Questions about how to properly fill out the log can be addressed at that time.

VII. MOTOR VEHICLE RECORD CHECKS

Drivers of Commercial Motor Vehicles must possess the valid driver's license required for them to perform their duties and their driving records must be in good standing at all times. It is every University driver's responsibility to immediately notify his/her supervisor when an accident occurs involving the driver, when a traffic ticket is issued to the driver, or when any adverse action is taken by any state or other authority with respect to his/her driving privileges for any reason (e.g., a license suspension, revocation, etc.). In addition, Risk Management and Safety will run MVR checks on each driver on a routine basis. If a driver's driving record is in poor standing or disqualifies the driver from driving Commercial Motor Vehicles, the driver's supervisor and the Department of Transportation Services will be notified to determine the appropriate disciplinary action.

VIII. CONTROLLED SUBSTANCES AND ALCOHOL USE TESTING (49 CFR, PART 382)

DOT and Federal Motor Carrier Safety Administration ("FMCSA") regulations governing alcohol and controlled substances testing apply to every driver whom the University requires to hold a CDL. The purpose of these regulations is to reduce the number of accidents caused by persons operating motor vehicles while under the influence of alcohol or controlled substances. The contents of this section of the policy will outline the University's requirements and employee responsibilities as they apply to alcohol and controlled substances.

If at any time an employee has questions regarding these requirements he or she may contact Ms. Shawn Oliver, Recruiting Coordinator, in Human Resources, at (574) 631-5900.

A. Alcohol and Controlled Substances Testing

1. To whom it applies: These requirements apply to any University employee who is required by the University to hold a CDL.
2. Testing schedule: Every employee whom the University requires to hold a CDL will be subject to testing for alcohol and controlled substances. The times of the testing may be unannounced. Once the employee is notified, he/she must immediately report to the University-designated testing center and submit a urine sample.
3. Types of testing: Alcohol tests will be taken from blood or breath, and controlled substance testing will be taken from urine, as specified in 49 CFR Part 40.

- a. Pre-employment testing: Each employee required by the University to hold a CDL will be tested for controlled substances prior to his/her first safety-sensitive duty. An employee may not operate a CMV until a negative test result is received by the University from its designated testing center.
- b. Random testing: Random tests may be administered at any time throughout the calendar year. These will be unannounced and will include at least 10% of the CDL employees in the pool for alcohol testing and at least 50% of the CDL employees in the pool for controlled substance testing annually. Names will be chosen at random. Once the employee is notified of the random testing, he/she must immediately report to the University-designated testing center and submit to testing.
- c. Reasonable suspicion testing: Supervisors will receive training to help them recognize employees who may be under the influence of alcohol or controlled substances, based on their physical, behavioral, speech, and performance actions. When a Supervisor reasonably suspects that the CDL operator is under the influence, he/she will request that the operator be tested. The supervisor will then fill out a "Supervisor's Reasonable Suspicion" form, and the employee must immediately report to the University-designated testing center and submit a urine sample.

The supervisor will confirm that appropriate transportation is provided for the employee to the medical facility. **Reasonable suspicion** is defined as: A belief that the driver has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.

- i. Alcohol

- A. Alcohol testing is permitted if the observations mentioned above are made during, just preceding, or just after the period of the driver's work day. Within the earlier of twenty-four (24) hours of the observed behavior or twenty-four (24) hours before the results of the alcohol tests are released, the observing supervisor or University official shall make a written record of the observations leading to an alcohol reasonable suspicion test. The record shall be signed

by the supervisor or official who made the observations.

- B. If a reasonable suspicion alcohol test is not administered within two hours following the observation, then the University – through the observing supervisor or official – shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight hours, all attempts to administer the test shall cease. A record shall be prepared and maintained stating why the alcohol test was not administered.

- C. In spite of the absence of a reasonable suspicion alcohol test, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall the University permit the driver in such case 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 that there is reasonable suspicion to believe that the driver has violated the prohibitions of the DOT's regulations concerning the use of alcohol.

- D. Except as provided in the preceding paragraph (C), the University will not take any action 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 the University from taking any action otherwise consistent with law, under authority other than DOT regulations.

ii. Controlled Substance Testing

A. The University will base its determination that reasonable suspicion exists on specific, contemporaneous, articulable observations of a trained supervisor or University official, including the Director of Human Resources, concerning the appearance, behavior, speech, or body odors of a driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

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

d. Post-accident testing

The University driver must report to a drug and alcohol testing center (e.g., hospital emergency room) for testing as soon as practicable following an accident, if:

i. the accident involved the loss of human life; or

ii. the driver received a citation within eight (8) hours of the occurrence, (in which case the driver must be tested for alcohol); or within thirty-two (32) hours of the occurrence (in which case the driver must be tested for controlled substances), if the accident involved:

A. bodily injury to any person who, as a result of the injury, immediately receives treatment away from the scene of the accident; or

B. any of the motor vehicles involved in the accident incurred disabling damage that required it to be towed from the scene.

The University reserves the right to test University drivers after any accident involving a University vehicle.

The driver must report for tests following any post-accident procedures that are required of the driver, including;

- i. medical attention for the driver,
- ii. pursuing medical attention for other injured persons,
- iii. accident reporting or any other services or assistance that may be requested of the driver following the accident that may be critical for injured persons or accident reporting.

An alcohol test may not be administered after two (2) hours or more have elapsed following the accident. A drug test may not be administered after thirty-two (32) hours or more have elapsed following the accident. Records regarding a failure to test within the appropriate time frame must be supplied by the driver's Supervisor to Risk Management and Safety explaining the reason for any delay. These records will be submitted to the FMCSA upon request.

If the accident occurs off campus, the driver shall obtain information from the officer at the site as to where to submit to a post-accident sample or shall go to the nearest emergency medical facility for testing.

The driver shall provide the medical testing facility with the Federal Drug Testing and Control Form to assure the appropriate destination for analysis. These forms should be kept in each CDL vehicle's glove box.

- e. Return to Duty.
 - i. An employee who has violated DOT drug and alcohol regulations (as stated, in part, at section VIII.F, "Prohibited Behavior") cannot again perform DOT safety-sensitive duties for any employer until and unless the employee completes a Substance Abuse Professional ("SAP") evaluation, referral, and education/treatment process.
 - ii. A violation of DOT drug and alcohol regulations includes a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including adulterating or substituting a urine specimen), or any other violation of the

prohibition on the use of alcohol or drugs under a DOT regulation.

iii. Initial Evaluation, Referral, and Education/Treatment Process

A. Initial Evaluation.

The SAP will:

- (i) provide a comprehensive face-to-face assessment and clinical evaluation; and
- (ii) recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty. In the course of gathering information, in the case of a drug-related violation the SAP may consult with a Medical Review Officer (“MRO”).

Neither the University nor an employee may seek or rely upon a second SAP evaluation if the employee already has been evaluated by a qualified SAP.

No one may change the SAP’s initial evaluation, except that the SAP who made the evaluation may modify the evaluation based on new or additional information.

B. Referral

The SAP will serve as a referral source to assist the employee’s entry into an education and/or treatment program.

C. Follow-Up Evaluation (49 CFR § 40.301)

The SAP will re-evaluate the employee to determine if the employee has successfully carried out the SAP’s education and/or treatment recommendations.

In order to do so, the SAP must confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals

where the employee was referred; and conduct a face-to-face clinical interview with the employee to determine if the employee demonstrates successful compliance with the SAP's initial evaluation recommendations.

If the employee has demonstrated successful compliance, provide a written report directly to the Designated Employer Representative ("DER") highlighting the SAP's clinical determination that the employee has complied with the initial evaluation recommendation. Contact information for the DER is available at www.transportation.nd.edu.

If the employee has not demonstrated successful compliance with the SAP's recommendations, the SAP will provide written notice directly to the DER.

- (i) After receiving the SAP's written notice, the University will not return the employee to the performance of safety-sensitive duties.
- (ii) The SAP may conduct additional follow-up evaluations if the University determines that doing so is consistent with the employee's progress as the SAP has reported it and with the University's policy.
- (iii) The University may take personnel action consistent with its policies.

D. Additional Treatment, Aftercare, or Support Group Services (49 CFR § 40.303)

If the SAP believes that ongoing services (in addition to follow-up tests) are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duties, the SAP must provide recommendations for these services in the follow-up evaluation report.

As an employer receiving a recommendation for these services from a SAP, the University may, as part of a

return-to-duty agreement with the employee, require the employee to participate in the recommended services. The SAP may monitor and document the employee's participation in the recommended services. The University also may make use of SAP and Employee Assistance Program services in assisting and monitoring employees' compliance with SAP recommendations.

Employees are obligated to comply with the SAP's recommendations for these services. If the employee fails or refuses to comply, the employee may be subject to disciplinary action by the University.

- iv. Conclusion of Return-to-Duty Process (49 CFR § 40.305)
 - A. If the University decides to permit the employee to return to the performance of safety-sensitive functions, the University must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.
 - B. The University must not return an employee to safety-sensitive duties until the employee meets the conditions of the preceding paragraph. The University, however, is not required to return an employee to safety-sensitive duties because the employee has met these conditions. The University retains the discretion to make this personnel decision consistent with its policies, collective bargaining agreement, or other legal requirements.
 - C. The SAP or MRO must not make a "fitness-for-duty" determination as part of this re-evaluation unless required to do so under an applicable DOT regulation. The employer – not the SAP or MRO – decides whether to put the employee back to work in a safety-sensitive position.

f. Follow-Up Testing (49 CFR § 40.307)

- i. The SAP will establish a written follow-up testing plan for each employee who has violated DOT drug or alcohol regulations and who seeks to resume the performance of safety-sensitive functions. The SAP will not establish this plan until it determines that the employee has successfully complied with the SAP's recommendations for education and/or treatment.
- ii. The SAP will present a copy of the plan to the DER.
- iii. Unless otherwise prescribed by DOT regulations, the SAP will be the sole determiner of the number and frequency of follow-up tests and whether those tests will be for drugs, alcohol, or both.
- iv. At a minimum, the SAP must direct that the employee be subject to six (6) unannounced follow-up tests in the first twelve (12) months of safety-sensitive duty following the employee's return to safety-sensitive functions.

The SAP may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty. For example, the SAP may require one test per month during the 12-month period; alternatively, the SAP could require two tests per month during the first 6-month period and one test per month during the final 6-month period.

The SAP also may require follow-up tests during the forty-eight (48) months of safety-sensitive duty following the first twelve (12) month period.

The SAP will not establish the actual dates for the follow-up testing. The decision on specific dates to test is the University's.

The University will not impose additional testing requirements on the employee that go beyond the SAP's follow-up testing plan.

- v. The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.

- vi. The SAP may modify the determinations concerning follow-up tests. For example, even if the SAP recommends follow-up testing beyond the first 12-months, the SAP can terminate the testing requirement at any time after the first year of testing. The SAP cannot, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after return to the performance of safety-sensitive functions.

B. Testing Procedures

1. The testing procedures to be followed are mandated by the Department of Transportation and the Federal Motor Carrier Safety Administration. Copies of those procedures are available to employees in the Human Resources office upon request.
2. Information on procedures related to the following is also available in the Human Resources office:
 - a. Protecting the driver and the integrity of the testing process.
 - b. Safeguarding the validity of the test results.
 - c. Ensuring that test results are attributed to the correct driver.

C. Supervisor Training

1. Supervisors of CDL drivers will be designated as having the authority to require drivers to submit to alcohol and/or controlled substance testing based upon reasonable suspicion as set forth above.

The training of supervisors to help them recognize employees who may be under the influence of controlled substances or alcohol shall cover at least 60 minutes on alcohol misuse and at least 60 minutes on the use of controlled substances. The training will cover:

- a. The physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.
- b. How to recognize, counsel and document employees whose performance has deteriorated as the potential result of alcohol and/or drug abuse.

- c. How and when to suggest and/or require the services of the Employee Assistance Program or any other drug/alcohol assistance program.
- d. Documentation of training.

D. Retention of Records; Confidentiality (49 CFR, Part 40, Subpart P)

Testing records will be maintained by the Department of Human Resources and kept on file at least for the length of time required by law. Reasonable steps will be taken to protect employee privacy with respect to these records.

If newly hired employees have held a CDL through a previous employer, the University will request information regarding his/her past testing results. Employees shall cooperate in any way requested by the University to assist it in obtaining such records (e.g., by signing appropriate authorizations).

The following records relating to the University drug and alcohol testing program must be maintained at a secure location with controlled access:

- 1. Records related to the collection process:
 - a. Collection logbooks;
 - b. Documents related to the random selection process;
 - c. Calibration documentation for evidential breath testing devices (“EBTs”);
 - d. Documentation of Breath Alcohol Technician (“BAT”) Training;
 - e. Documentation generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances testing;
 - f. Documentation generated in connection with decisions on post-accident testing;
 - g. Documents verifying existence of a medical explanation of the inability of to provide adequate breath or urine for testing; and
 - h. Consolidated annual calendar year summaries.

2. Records related to the drivers' test results:
 - a. The University's copy of the alcohol test form, including results;
 - b. The University's copy of the drug test chain of custody and control form;
 - c. Documents sent to the University by the MRO;
 - d. Documentation of any driver's refusal to submit to a required alcohol or controlled substances test;
 - e. Documents provided by a driver to dispute results of test; and
 - f. Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the University must obtain for certain purposes specified in the DOT regulations.
3. Documentation of any other violations of this Policy or the DOT's alcohol and controlled substances testing regulations.
4. Records related to evaluations and training:
 - a. Records pertaining to the SAP's determination of driver's need for assistance; and
 - b. Records concerning a driver's compliance with the SAP's recommendations.
5. Records related to education and training:
 - a. Materials on alcohol misuse and controlled substance use awareness, including a copy of the University's policy on controlled substance use and alcohol misuse;
 - b. Documentation of compliance with requirement to provide drivers with educational material, including driver's signed receipt of materials;
 - c. 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;

- d. Documentation of training for breath alcohol technicians as required by the DOT regulations; and
 - e. Certification that training conducted under the DOT regulations complies with all requirements of those regulations.
6. Records relating to drug testing:
- a. Agreements with collection site facilities, laboratories, MROs, consortia, and third party service providers;
 - b. Names and positions of officials and their role in the University's alcohol and controlled substance testing program;
 - c. Semi-annual laboratory statistical summaries of urinalysis; and
 - d. The University's alcohol and controlled substances testing policy and procedures.

Records shall be made available for inspection at the University's corporate office within two business days after a request has been made by an authorized representative of the FMCSA.

Records must be maintained pursuant to the following schedule:

Document to be Maintained	Period of Retention
Alcohol test results indicating a breath alcohol concentration of 0.02 or greater	5 Years
Verified positive controlled substance test results	5 Years
Refusals to submit to required alcohol and/or controlled substance tests	5 Years
Required calibration of EBTs	5 Years
SAP's evaluations and referrals	5 Years
Records related to the administration of the alcohol and controlled substances testing programs	5 Years
Annual calendar year summary	5 Years
Records related to information from previous employers about previous employees' drug/alcohol testing and/or violations	3 Years
Records related to the collection process (except calibration)	2 Years
Negative and cancelled controlled substance test results	1 Year
Alcohol test results indicating a breath alcohol concentration less than 0.02	1 Year
Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers	2 Years after the individual ceases to perform the relevant functions

E. Medical Review Officer's Notification of Test Results and Retention of Records (49 CFR, Subpart G)

The Medical Review Officer (MRO) is a licensed physician responsible for receiving laboratory results generated by the University's drug and alcohol testing program. The MRO will maintain all dated records and notifications for positive alcohol and controlled substances test results for 5 years. Negative and canceled alcohol and controlled substance test results will be kept for one year.

1. Employer notification:

The MRO will report alcohol and controlled substance test results to the Department of Human Resources by a signed, written notification. It must be forwarded within three business days of the completion of the MRO's evaluation.

2. Employee notification:

Before the MRO verifies a positive result he/she will take reasonable steps to contact the driver and give him/her the opportunity to discuss the test results. If the MRO is unable to contact the driver, those efforts will be documented and the MRO will contact the Department of Human Resources who will direct the driver to contact the MRO within twenty-four (24) hours. The driver has seventy-two (72) hours following notification to request a secondary sample be analyzed from the original split sample. However, the second test will be analyzed only for the presence of alcohol or the controlled substance, unlike the first test which tests for certain threshold levels. If the second test is positive then the first result stands. If the second is negative then the first result is disregarded.

F. Prohibited Behavior

1. Alcohol Concentration

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If the University has actual knowledge that a driver has an alcohol concentration of 0.04 or greater, the University shall not permit the driver to perform or continue to perform safety-sensitive functions.

- a. If an alcohol test reveals that a driver has an alcohol concentration of 0.02 or greater but less than 0.04, the University shall not permit the driver to perform or continue to perform safety sensi-

tive functions until the later of the driver's next regularly scheduled duty period or twenty-four (24) hours following the administration of the driver's test.

- i. Except as provided in the preceding paragraph (i), the University shall take no other action against the driver based solely on test results showing an alcohol concentration less than 0.04.

2. On-Duty Use

No driver shall use alcohol while performing safety-sensitive functions. If the University has actual knowledge that a driver is using alcohol while performing safety-sensitive functions, the University shall not permit the driver to perform or continue to perform safety-sensitive functions.

3. Pre-Duty Use

Regardless of whether his/her blood alcohol concentration has been tested and of the results of any such test, no driver shall perform safety-sensitive functions within four (4) hours after using alcohol. If the University has actual knowledge that a driver has used alcohol within four (4) hours, the University shall not permit the driver to perform or continue to perform safety-sensitive functions.

4. Use Following an Accident

No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until the driver undergoes a post-accident alcohol test, whichever occurs first.

5. Refusal to Submit to a Required Alcohol or Controlled Substances Test

No driver shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol or controlled substances test. The University shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

6. Controlled Substances Use

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

- b. If the University has actual knowledge that a driver has used a controlled substance, the University shall not permit the driver to perform or continue to perform a safety-sensitive function.
- c. The University may require a driver to inform the University of any therapeutic drug use.

7. Controlled Substances Testing

No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. If the University has actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances, the University shall not permit the driver to perform or continue to perform safety-sensitive functions.

G. Consequences of Engaging in Prohibited Behavior

- 1. Employees who test positive for controlled substances or 0.04 or above for alcohol, or who engage in any of the prohibited behaviors described in section VIII.F above or in violation of this Policy, will be subject to the disciplinary actions stated in the University of Notre Dame's Human Resources Policy Manual. Supervisors will discuss with Human Resources disciplinary actions to be taken, up to and including termination of employment.
- 2. Prior to the start of work, a driver must report to his/her supervisor his/her misuse of alcohol or use of any prescription and/or non-prescription drugs which may affect job performance or the safety of others. If the driver uses any such drugs, the driver must show the supervisor the labeled drug container. It is the driver's responsibility to obtain from his/her physician a determination as to whether or not the drug could affect job performance and supply that information to his/her supervisor.
 - a. Employees who admit to alcohol misuse or controlled substance use shall be allowed to participate in the University's Employee Assistance Program. Please see the Director of Human Resources or other University official for details.

H. Responding to Alcohol Misuse and Controlled Substances Use.

Information concerning the following is available in the Human Resources Department:

1. The effects of alcohol and controlled substances use on an individual's health, work, and personal life;
2. Signs and symptoms of an alcohol or controlled substances problem (a driver's or co-worker's); and
3. Available methods of intervening when an alcohol or controlled substances problem is suspected. Suggested methods include confrontation, referral to the University's Employee Assistance Program, and/or referral to management.

I. Confidentiality

All information obtained in the course of testing of employees shall be protected as confidential medical information. Except as provided below, no data concerning this information will be made a part of the employee's personnel file or will be provided to any other party without the written consent of the employee.

1. The University shall release information contained in its records of alcohol misuse and controlled substances use prevention programs only as follows:
 - a. A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The University shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.
 - b. The University shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, the DOT, FMCSA, or any other federal, state or local officials with regulatory authority over the University or any of its drivers.
 - c. The University shall make available copies of all results for alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the University's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, the DOT, FMCSA, or any other federal, state or local officials with regulatory authority over the employer or any of its drivers.

- d. When requested by the National Transportation Safety Board as part of an accident investigation, the University shall disclose information related to the University's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.
- e. Information 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.
- f. The University may disclose information required to be maintained under the DOT regulations pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver), 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). Additionally, the University may disclose information in criminal or civil actions.
- g. The University 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 driver's specific written consent.

APPENDIX: DEFINITIONS

Breath Alcohol Technician (“BAT”): A person who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

Chauffeur’s License: A Chauffeur’s License grants the same privileges as an operator license. In addition, the holder of the license is permitted to operate vehicles with a gross vehicle weight rating of at least 16,000 pounds but not more than 26,000 pounds when used to transport property for hire or as an employee. A Chauffeur’s License does not authorize the holder to carry persons for hire, whether in a bus or a taxicab.

Commercial Driver’s License (“CDL”): A special license required of drivers who drive Commercial Motor Vehicles which meets the following criteria:

- a. Has a gross combination weight rating of 26,001 or more pounds, inclusive of towed units, with a gross vehicle weight rating of more than 10,000 pounds.
- b. Has a gross vehicle weight rating of 26,001 or more pounds.
- c. Is designed to transport 16 or more passengers, including the driver.
- d. Is of any size and is used in the transportation of hazardous materials.

Commercial Motor Vehicle (“CMV”): Any self-propelled or towed vehicle used on a highway (any roadway or passage which may be available to public transportation at any time, whether on private property or public property) in interstate or intrastate commerce to transport passengers or property when the vehicle;

- a. Has a gross vehicle weight rating or gross combination weight (including gross combination weight trailers), or rating of 10,001 or more pounds.
- b. Regardless of weight, is designed or used to transport more than 8 passengers (including the driver), for compensation.
- c. Regardless of weight, is designed or used to transport more than 15 passengers (including the driver), and is not used to transport passengers for compensation.
- d. Regardless of weight, is used in the transportation of materials found by the Secretary of Transportation to be hazardous under 49 USC § 5103 and transported in a quantity requiring the motor vehicle to be placarded under 49 CFR Part 72, Subpart F (49 CFR § 172.500).

Confirmation Test: For alcohol testing, a second test, following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration. For controlled substances testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test in order to ensure reliability and accuracy.

Designated Employer Representative (“DER”): An individual identified by the University 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 the University. Service agents such as BATs and outside laboratories cannot serve as DERs.) Contact information for the DER is available at www.transportation.nd.edu.

Driver: Any person who operates a Commercial Motor Vehicle. For purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle. Students are not authorized to operate CMVs under any circumstances.

Evidential Breath Testing Device (“EBT”): A device approved by the National Highway Traffic Safety Administration (“NHTSA”) for the evidential testing of breath at the 0.02 and 0.04 alcohol concentrations, placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices” (“CPL”), and identified on the CPL as conforming with the model specifications available from NHTSA’s Traffic Safety Program.

Medical Review Officer (“MRO”): A licensed physician responsible for receiving and reviewing laboratory results generated by an employer’s drug testing and for evaluating medical explanations for certain drug test results.

Performing a Safety-Sensitive Function: Any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.

Safety-Sensitive Function: Any of the following on-duty functions set forth in 49 CFR § 395.2:

1. All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
2. All time inspecting equipment, 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, spent on or in a Commercial Motor Vehicle except time spent resting in a sleeper berth.
5. All time loading or unloading a Commercial Motor Vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled Commercial Motor Vehicle, or all time spent performing the driver requirements associated with an accident.
7. All time, including travel time to and from the collection site, spent to comply with random, reasonable suspicion, post-accident, or follow-up testing.

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

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with the applicable DOT 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 a consortium third party administrator;
2. Fails 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 a pre-employment test is not deemed to have refused to test;
3. Fails to provide a urine specimen for any drug test required by this part or DOT agency regulation. 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 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, fails to permit the observation or monitoring of the driver's provision of a specimen;
5. Fails 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
6. Fails or declines to take a second test the employer or collector has directed the driver to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER. 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;
8. Fails to cooperate with any part of the testing process (e.g. refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or
9. Is reported by the MRO as having a verified adulterated or substituted test result.

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

Substance Abuse Professional (“SAP”): A person designated by the University who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning evaluation, treatment, follow-up testing, and after-care.