

COMMERCIAL DRIVER'S SUBSTANCES & ALCOHOL USE & TESTING

**U.S. Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)**

49 CFR PART 382

CONTROLLED SUBSTANCES & ALCOHOL USE & TESTING

for

Western Nebraska Community College

(Updated: January 1, 2011)

SECTION A - GENERAL

This policy and its' College procedures, 49 CFR Part 40 Regulations of the U. S. Department Of Transportation Procedures For Transportation Workplace Drug & Alcohol Testing Programs (revised August 25, 2008) and Urine Specimen Collection Guidelines, (revised August 29, 2009) Office of Drug & Alcohol Policy & Compliance, U.S. Department of Transportation, are integral parts of this policy and apply to all employees whose job function requires possession of a valid and current Commercial Drivers License (CDL). Collection procedures, laboratory procedures, MRO review, alcohol testing, record keeping and all other procedural requirements shall adhere to Part 40. Part 40 is included in its entirety as Appendix A. The Urine Specimen Collection Guidelines are included in its entirety as Appendix B.

Western Nebraska Community College 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 Western Nebraska Community College 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 College; 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 & Alcohol Use & Testing Policy complies with requirements of the Department of Transportation regulations as set forth in 49 CFR Parts 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. Western Nebraska Community College shall ensure that all covered employees are aware of the provisions and coverage of Western Nebraska Community College's Controlled Substances & Alcohol Use & Testing Policy and that all employees are notified prior to testing.

Western Nebraska Community College's Independent Authority

This Controlled Substances & Alcohol Use & Testing Policy sets forth the requirements of 49 CFR Parts 382 and 40. Those areas of the policy that appear in italic print reflect Western Nebraska Community College's independent authority to require additional provisions with regard to drug and alcohol testing procedures. To the extent College state specific non-DOT College 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, College'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).

TESTING PROCEDURES 382.105

Western Nebraska Community College 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 Western Nebraska Community College 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 Western Nebraska Community College that a driver has used alcohol or controlled substances based on Western Nebraska

Community College'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 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 Western Nebraska Community College 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 College. 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.

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 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 C/TPA (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.
- (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 Western Nebraska Community College'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 Western Nebraska Community College;
- (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.

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, Western Nebraska Community College, or the general public.

OTHER REQUIREMENTS IMPOSED BY Western Nebraska Community College 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 Western Nebraska Community College, 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.

PRE-DUTY DISCLOSURE OF ANY IMPAIRING EFFECT MEDICATION

Any employee working in a safety-sensitive position is required, as a safety rule, to pre-duty disclosure that they are taking ANY impairing affect prescription (including medical marijuana) or over the counter medications which may have an effect on performance of safety-sensitive duties. If the fact that the employee is taking an impairing effect medication is not disclosed pre-duty by a safety-sensitive employee and the employee tests positive or is determined by the MRO to be a potential safety risk due to a medication, that employee will be subject to discipline, up to and including termination for violation of this safety rule. If disclosure is made, prior to being called for testing, the College reserves the right to send the employee for a Fitness for Duty evaluation to evaluate the medication and its effects on the performance of

safety-sensitive duties. In advance of testing, employees are encouraged to have their own doctor make an individualized assessment of any safety related risks of the medication(s) which they are taking, providing the doctor a copy of their job description, and having the doctor render an opinion on the safety related risks. The employee need not disclose to the College the medication or medical condition involved to fulfill the disclosure obligation of this safety policy. All information provided will be kept separate from personnel files and in a confidential manner. The MRO will make the final determination on the safety related risks of any particular medication.

Note: Safety-sensitive employees are those employees who discharge duties so fraught with risks of injury to self or others, environmental injury and/or property damage that even a momentary lapse of attention can have disastrous consequences.

REQUIREMENT FOR NOTICE 382.113

Before performing an alcohol or controlled substances test under the Federal regulation, Western Nebraska Community College shall notify a driver that the alcohol or controlled substances test is required by Federal regulation. Western Nebraska Community College 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

Western Nebraska Community College shall 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) Western Nebraska Community College 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 Western Nebraska Community College 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. Western Nebraska Community College 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, Western Nebraska Community College 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 Western Nebraska Community College'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 Western Nebraska Community College 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 Western Nebraska Community College 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. **EMPLOYEE ASSISTANCE PROGRAM**

Western Nebraska Community College'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 Western Nebraska Community College 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 Western Nebraska Community College 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 Western Nebraska Community College 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. Western Nebraska Community College shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

CONTROLLED SUBSTANCES USE 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) Western Nebraska Community College, 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) Western Nebraska Community College may require a driver to inform Western Nebraska Community College of any therapeutic drug use.

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. Western Nebraska Community College, 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.

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 Western Nebraska Community College), post-accident, random, and reasonable suspicion. Return-to-duty and follow-up-testing is also required if the Western Nebraska Community College 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.

COLLEGE RESERVES RIGHT TO CONDUCT NON-DOT DRUG AND ALCOHOL TESTING

In addition to drug and alcohol testing conducted by College pursuant to 49 CFR Part 40, and specifically allowed for in 49 CFR Part 382, College reserves the right to screen and/or test employees under College's Policy including, but not limited to, laboratory testing and point of collection test (POCT) devices utilizing alternative body specimens including urine and oral fluid (saliva), for the detection of illegal drugs, prescription and over the counter medications or substances which have an impairing effect and/or alcohol, taken by safety-sensitive employees, as may be permitted by applicable state or local laws or regulations and collective bargaining agreements. These collections will be performed in addition to, and not as a substitute for, DOT regulated tests and these 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].

For purposes of College's compliance with DOT testing requirements, such non-DOT tests will be considered as if no DOT test was conducted regardless of the result of such test(s). Such screening and/or testing will be conducted in conformity with State Laws, the device manufacturer's recommendations. No DOT related consequences under DOT Agency Regulations arise based on the results of a non-DOT test(s)

or refusal to submit to a non-DOT test [40.191. Any drug or alcohol screen/test performed outside of DOT guidelines is not subject to the DOT Employer Reporting requirements [40.25].

PRE-EMPLOYMENT 382.301

(a) Prior to the first time a driver performs safety-sensitive functions for Western Nebraska Community College, the driver shall undergo testing for controlled substances as a condition prior to being used, unless Western Nebraska Community College uses the exception in paragraph (b) of this section. Western Nebraska Community College shall allow a driver, who Western Nebraska Community College intends to hire or use, to perform safety-sensitive functions unless Western Nebraska Community College has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver. *Western Nebraska Community College 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, Western Nebraska Community College shall accept the result as a negative test.*

(b) Western Nebraska Community College 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 Western Nebraska Community College), or
 - (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with Western Nebraska Community College); and
- (3) Western Nebraska Community College ensures that no prior employer of the driver of whom Western Nebraska Community College 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 Western Nebraska Community College exercises the exception in paragraph (b) of this section, Western Nebraska Community College 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 Western Nebraska Community College 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 Western Nebraska Community College cannot verify that the driver is participating in a controlled substances testing program in accordance with this policy and part 40 of Federal regulations, Western Nebraska Community College shall conduct a pre-employment controlled substances test.

(d) Western Nebraska Community College may, but is not required to, conduct pre-employment alcohol testing under this policy. If Western Nebraska Community College 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, Western Nebraska Community College shall test for alcohol for each of it's 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, Western Nebraska Community College shall test for controlled substances for each of it's 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:

Type of accident involved	Citation issued to the CMV driver	Test must be performed by Western Nebraska Community College
Human fatality	If YES	Then YES
	If NO	Then YES
	If YES	Then YES

Bodily injury with immediate medical treatment away from the scene	If NO	Then NO
Disabling damage to any motor	If YES	Then YES
Vehicle requiring tow away	If NO	Then NO

- (d)(1) Alcohol tests. If a test required by this section is not administered within two hours following the accident, Western Nebraska Community College 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, Western Nebraska Community College 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, Western Nebraska Community College 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 Western Nebraska Community College 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) Western Nebraska Community College 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 Western Nebraska Community College.
- (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 Western Nebraska Community College.
- (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 Western Nebraska Community College 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) Western Nebraska Community College 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 50 percent of the average number of driver positions.

NOTE: Sections (c) thru (h) address the FMCSA Administrator's decision to increase or decrease the minimum annual random percentage rate for alcohol and controlled substances testing based on the reported violation rate for the entire industry. For the year 2008, the minimum annual random testing rate for alcohol is 10% and for controlled substances 50%.

- (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, Western Nebraska Community College, 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 Western Nebraska Community College's random testing pool, and all covered drivers must be in the random pool. If Western Nebraska Community College conducts random testing more often than once per month (e.g., daily, weekly, bi-weekly) Western Nebraska Community College does not need to compute this total number of covered drivers rate more than on a once per month basis.
 - (2) Western Nebraska Community College 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, Western Nebraska Community College 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) Western Nebraska Community College shall ensure that random alcohol and controlled substances tests conducted under this policy are unannounced.
 - (2) Western Nebraska Community College shall ensure that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.
- (l) Western Nebraska Community College 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, Western Nebraska Community College 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 Western Nebraska Community College, 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 Western Nebraska Community College is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, Western Nebraska Community College 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 Western Nebraska Community College is subject.

REASONABLE SUSPICION 382.307

(a) Western Nebraska Community College shall require a driver to submit to an alcohol test when Western Nebraska Community College has reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning alcohol. Western Nebraska Community College'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) Western Nebraska Community College 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. Western Nebraska Community College'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 Western Nebraska Community College 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 College 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 Western Nebraska Community College 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, Western Nebraska Community College 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, Western Nebraska Community College 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 Western Nebraska Community College 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, Western Nebraska Community College 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 Western Nebraska Community College 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 Western Nebraska Community College 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 following-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. Western Nebraska Community College 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. Western Nebraska Community College 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, and

- (vii) 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 Western Nebraska Community College 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) Western Nebraska Community College's copy of the alcohol test form, including the results of the test,
 - (ii) Western Nebraska Community College's copy of the controlled substances test chain of custody and control form,
 - (iii) Documents sent by the MRO to Western Nebraska Community College, 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 Western Nebraska Community College:
 - (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 Western Nebraska Community College'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 Western Nebraska Community College'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) Western Nebraska Community College'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 Western Nebraska Community College'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) Western Nebraska Community College 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 Western Nebraska Community College or any of its drivers.

(b) If Western Nebraska Community College is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report Western Nebraska Community College's annual calendar year summary information, Western Nebraska Community College shall prepare and submit the report to the FMCSA by March 15 of that year. Western Nebraska Community College shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. Western Nebraska Community College 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). Western Nebraska Community College 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. Western Nebraska Community College shall ensure the accuracy and timeliness of each report submitted by Western Nebraska Community College or a consortium.

(d) If Western Nebraska Community College 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 Western Nebraska Community College), 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. Western Nebraska Community College 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 Western Nebraska Community College. However, a College 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, Western Nebraska Community College 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. Western Nebraska Community College 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) Western Nebraska Community College 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 Western Nebraska Community College or any of its drivers.

(d) Western Nebraska Community College shall make available copies of all results for Western Nebraska Community College's alcohol and/or controlled substances testing conducted under this policy and any other information pertaining to Western Nebraska Community College's alcohol misuse and/or controlled substances use prevention program(s), when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over Western Nebraska Community College and any of its drivers.

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

(f) 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.

(g) Western Nebraska Community College 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).

(h) Western Nebraska Community College 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 Western Nebraska Community College 382.407

The medical review officer shall report the results of controlled substances tests to Western Nebraska Community College 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 or third party administrator, and no medical review officer or third party administrator shall 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 medical review officer or third party administrator from releasing, to Western Nebraska Community College or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this policy, the information delineated in 49 CFR part 40, Subpart G.

EMPLOYER NOTIFICATIONS 382.411

(a) Western Nebraska Community College 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. Western Nebraska Community College 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. Western Nebraska Community College 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

Western Nebraska Community College shall request alcohol and controlled substances information from previous employers in accordance with the requirements of 49 CFR part 40.25.

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) Western Nebraska Community College shall not permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if Western Nebraska Community College 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. Western Nebraska Community College 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 Western Nebraska Community College, including driving a commercial motor vehicle, nor shall Western Nebraska Community College 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, Western Nebraska Community College 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 Western Nebraska Community College with authority independent of this policy from taking any action otherwise consistent with law.

The use or possession of alcoholic beverages while on Western Nebraska Community College's property, or in any of Western Nebraska Community College's vehicle, or on Western Nebraska Community College'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 Western Nebraska Community College's personnel when contacted. Failure to advise Western Nebraska Community College 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

Western Nebraska Community College 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

Western Nebraska Community College's OBLIGATION TO PROMULGATE A POLICY ON THE MISUSE OF ALCOHOL AND USE OF CONTROLLED SUBSTANCES. 382.601

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

- (1) Western Nebraska Community College 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) Western Nebraska Community College 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 Western Nebraska Community College 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) *Optional provision.* The materials supplied to drivers may also include information on Western Nebraska Community College'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 Western Nebraska Community College's authority independent of Federal regulation. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Western Nebraska Community College 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. Western Nebraska Community College shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

TRAINING FOR SUPERVISORS 382.603

Western Nebraska Community College 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.

Adopted, March 16, 2011