



TOWN BOARD WORK SESSION AGENDA

Wednesday, January 14, 2026 at 5:00 PM

MEETING LOCATION

1201 Broad Street, Meeting House, Milliken, CO 80543

Zoom Meeting Details

To Join via Zoom

<https://us02web.zoom.us/j/81993287069?pwd=m7AIW8o812RaY6qr4ncOSZybzURsiz.1>

Meeting ID: 819 9328 7069 Passcode: 357737

One tap mobile +17193594580,,81993287069#,,,,*357737# US

Join <https://us02web.zoom.us/j/81993287069?pwd=m7AIW8o812RaY6qr4ncOSZybzURsiz.1>
instruct
ions:

1. Discussion Topics

a. New Drug & Alcohol Policies for DOT-Regulated and Safety-Sensitive Positions

kkindsfather kkindsfather, HR/Senior Center/Special Events

b. ERISA Lawyers Discussion

c. Change Policy

ACCOMMODATION NOTICE

The Town of Milliken complies with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 guidelines. Ensuring the public's access to and participating in public meetings is a priority for the Town of Milliken.

In the event you are in need of reasonable accommodation in order to attend or participate in a public meeting conducted by the Town of Milliken, please contact the Town Clerk, Caree Rinebarger at (970) 660-5045 within 3 to 5 days before the scheduled meeting date, in order to allow the Town to better accommodate your request.

NOTE:

Agendas will be published no later than 24-hours prior to the meeting.

Headings in this agenda are for organizational purposes only. The Board of Trustees may take formal action on any matter reasonably related to any item listed under any section of this agenda. Town of Marble v. Darien, 181 P.3d 1148 (Colo. 2008); Benson v. McCormick, 578 P.2d 651 (1978).

Contact: Caree Rinebarger, Town Clerk
CRinebarger@town.milliken.co.us | (970) 587-4331



1.a.

**TOWN OF MILLIKEN
BOARD OF TRUSTEES
AGENDA MEMORANDUM**

To: Mayor Austin and Trustees
From: kkindsfather kkindsfather, HR/Senior
Center/Special Events
Via: Cheryl Powell, Town Administrator

Meeting Date:
January 14, 2026

Item Category: Discussion Agenda

Agenda Title: New Drug & Alcohol Policies for DOT-Regulated and Safety-Sensitive Positions

Attachments:

1. FINAL Non-DOT DA - Town of Milliken 1.28.26
2. FINAL FMCSA - DOT D&A - Town of Milliken 1.28.26
3. 2025-11-05 Addendum CDL-DOT - Revised by MG
4. 2025-11-05 Addendum Non-CDL - Revised by MG
5. Drug-Screen-Parental-Consent-for-Minor

PURPOSE

To establish clear, compliant drug and alcohol standards that protect employee safety, the public, and the Town from regulatory and liability risk.

BACKGROUND

These new policies update the Town's drug and alcohol standards to ensure regulatory compliance and promote employee and public safety.

BUDGET IMPLICATIONS

Associated costs are covered within the adopted budget, with agreements executed. The Finance Director can provide exact cost figures as needed.

STAFF RECOMMENDATIONS

Staff recommends adoption of the Town's new Drug and Alcohol Policies, including

CORA disclosure addendums, for all applicable positions.

SUGGESTED MOTION

I move to adopt the Town's new Drug and Alcohol Policies, including CORA disclosure addendums, for all applicable positions.

Town of Milliken

Employee & Applicant Drug and Alcohol Testing Policy

Effective: 01/28/2026

Alcohol and Drug Abuse Policy

Statement of Purpose and Policy

Employees are an extremely valuable resource for Town of Milliken (hereafter referred to as “Town of Milliken,” “Company” or Employer”) business. Their health and safety is a serious Company concern. Drug or alcohol use may pose a serious threat to employee health and safety. It is, therefore, the policy of the Company to establish a “Drug Free Work Place” by preventing substance use or abuse from having an adverse effect on our employees, and to provide all of our employees a working environment free from alcohol and controlled substance misuse. The Company maintains that the work environment is safer and more productive without the presence of alcohol, illegal or inappropriate drugs in the body or on company property. Furthermore, employees have a right to work in an alcohol and drug-free environment, and to work with employees free from the effects of alcohol and drugs. Employees who abuse alcohol or use drugs are a danger to themselves, their coworkers, and the Company's assets.

Scope of Coverage

This policy applies to employees who regularly operate Town-owned vehicles and those in safety-sensitive roles. Safety-sensitive positions are listed in the definitions section of this policy and involve duties that require the safe operation of Town vehicles or equipment or hold direct responsibility for the safety and well-being of others. Refer to “employee” within the definitions section of this policy.

Company Related Activities

Specifically, it is the policy of the Company that the use, sale, purchase, transfer, possession, or presence in one's system of any controlled substance (except medically prescribed drugs) by any covered employee or applicant while on company premises, engaged in company business, while operating company equipment, or while under the authority of the Company is strictly prohibited.

Execution and Enforcement

The execution and enforcement of this policy will follow set procedures to screen body fluids, conduct breath testing, and/or search all applicants for alcohol and drug use, and those employees suspected of violating this policy. These procedures are designed not only to detect violations of this policy, but to ensure fairness to each covered employee and applicant. Every effort will be made to maintain the dignity of employees or employee applicants involved. Disciplinary action will, however, be taken as necessary.

Town of Milliken intends to comply with all applicable state and federal laws, therefore, this policy will outline federal law and this policy will govern unless state law requires otherwise. If state law differs from this policy, the state addendum below will outline alternative requirements. With this understanding, covered employees found to have violated the prohibitions established in Town of Milliken's policy will be terminated from employment.

Terms of Employment/Changes and Effective Date

Neither this policy nor any of its terms are intended to create a contract of employment or to contain the terms of any contract of employment. The Company retains the sole right to change, amend, or modify any term or provision of this policy without notice. This policy is effective 01/28/2026 and will supersede all prior policies and statements relating to alcohol or drugs.

Employer Policy Alcohol and Drug Testing Procedures

The purpose of this policy is to set forth the procedures for the implementation of controlled substances and alcohol use and testing of applicants and current employees. These procedures are intended as a guide only, and are in no way intended to alter any existing relationship between Town of Milliken and any covered employee.

Alcohol and Drug Program Administrator

Town of Milliken alcohol and drug program administrator designated to monitor, facilitate, and answer questions pertaining to these procedures is:

Kathryn "Kathy" Kindsfather
1101 Broad Street, Milliken, Colorado 80543
(970) 660-5040
kkindsfather@millikenco.gov

Definitions

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols 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 part.

Chain of Custody A chain-of-custody form is used to document the handling and storage of a sample from the time it is collected until the time it is disposed. It links an individual to his or her sample and is written proof of all that happens to the specimen while at the collection site and the laboratory.

Collection site means a place where individuals present themselves for the purpose of providing breath, body fluid, or tissue samples to be analyzed for specified controlled substances. The site must possess all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage and transportation or shipment of the samples to a laboratory.

Confirmation Test A second, confirmation test (by gas chromatography/mass spectrometry or GC/MS) is highly accurate and provides specificity to help rule out any false positives (mistakes) from the initial screen. For a test result to be reported as positive, the initial screen and confirmation test results must agree.

Controlled substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR 1308). Unless otherwise required by state law, the following controlled substances shall be tested for as required by this policy:

- Marijuana metabolites.
- Cocaine metabolites.
- Amphetamines.
- Opioid metabolites.
- Phencyclidine (PCP).

Employee is, for this policy, a *covered employee* who regularly operates a Town-owned vehicle or holds a position designated as safety-sensitive. Safety-sensitive positions are those in which the employee's duties involve the safe operation of Town vehicles or equipment, or where the employee has direct responsibility for the safety and welfare of others.

Departments and positions designated as safety-sensitive include, but are not limited to:

- All Water and Wastewater Department employees
- All sworn and uniformed employees of the Police Department
- All Public Works Department employees, including Streets, Facilities Maintenance, Parks, and any Seasonal employees who operate a Town-owned vehicle
- Senior Center Assistant (driver of the Senior Center van)
- Community Court Case & Resource Manager (driver of the Town-owned van transporting adolescents)

Only covered employees, as defined above, are subject to the provisions of this policy, including any drug and/or alcohol testing described herein.

Employee assistance programs (EAP) is an employee benefit program offered by many employers. EAPs are intended to help employees deal with substance abuse issues that might adversely impact their job performance, health, and well-being. EAPs generally include short-term counseling and referral services for employees.

Initial Screen The first analysis done on a sample is called an initial screen. This one test alone is not always accurate or reliable; there is a possibility of a false positive. Thus, in the event that the initial screen is positive, a second confirmatory test should be done.

Medical Review Officer (MRO) is a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating **medical** explanations for certain drug test results

Safety-sensitive position means a job wherein an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, including a job with duties that include immediate supervision of a person in a job that meets the requirement of this paragraph.

Specimen means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites.

Split Sample A split sample is created when an initial urine sample is split into two. One sample is used for the initial screen and, if positive, the second sample is used for the confirmation test. If there is a positive result, the individual being tested may request the confirmation test be done at a different

laboratory. DOT's alcohol and drug-testing regulations require all tests be performed using a "split sample" collection process.

The Substance Abuse Professional (SAP) is a person who evaluates employees who have violated an employer's drug and alcohol program regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Notice to Applicants and Employees

Every employee will be provided a copy of this policy prior to the commencement of testing. In addition, you can review a copy of this policy at any time by contacting the Alcohol and Drug Program Administrator. Every employee will be required to sign a receipt acknowledging they have received and reviewed this policy.

Prohibited Substances/Prescription Medications

Alcohol use

Means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol which, when consumed, causes an alcohol concentration in excess of 0.02. Anyone found to be positive for alcohol will be subject to discipline as provided in this policy.

Controlled Substances

Unless otherwise indicated, a urinalysis will be conducted to detect the presence of the following substances:

- Marijuana
- Cocaine
- Opioids
- Amphetamines
- Phencyclidine (PCP)

Detection levels shall be in accordance with the guidelines adopted by the federal Substance Abuse and Mental Health Services Administration (DHHS or SAMHSA). Anyone found to be positive for controlled substances will be subject to discipline as provided in this policy.

Possession of Prohibited Substances

Anyone found to be in possession of a prohibited substance will be subject to discipline as provided in this policy.

Marijuana

Town of Milliken will continue to test for marijuana, but recognizes that many states have authorized the medical or recreational use of such. Town of Milliken will thus, abide by all applicable state laws in the event that an employee or applicant tests positive for marijuana usage. Discipline will be imposed as provided in this policy, unless state law requires otherwise.

Prescription Medication

The American's with Disabilities Act (ADA) prohibits an employer from asking what prescription medications an employee is taking and for what they are taking it. Many over-the-counter medications, and even prescription medications, may interfere with your ability to work safely and within the requirements of the alcohol and drug requirements. Make sure you know about the possible side effects of these drugs before taking them. Consult your physician if you have any *questions* about a prescription and read ingredients label and directions for use on *every* over-the-counter drug you use. Town of Milliken requires employees remain "fit-for-duty" whenever at work, therefore, if an employee feels they are unfit to perform their duties, they must inform their supervisor they are not fit for duty.

Prohibitions

The following actions are prohibited under this policy:

Alcohol Prohibitions

- Reporting for duty or remaining on duty with an alcohol concentration of 0.02 or greater
- Possession of alcoholic beverages while on duty
- Use while on duty
- Alcohol Test result of 0.02 or greater while on duty
- Refusal to take a required test

Controlled Substance Prohibitions

- Use of any drug, except by doctor's prescription, and then only if the doctor has advised the employee that the drug will not adversely affect the employee's ability to safely perform their duties.
- Use, sale, purchase, transfer, possession, or presence in one's system of any controlled substance (except medically prescribed drugs) by any covered employee or applicant while on company premises, engaged in company business, while operating company equipment, or while under the authority of the Company Testing positive for drugs.
- Testing positive for Adulterants, dilution or substitution will be treated as a positive test.
- Refusing to take a required test.

In the event that state law differs from the prohibitions established in this policy, state law will prevail.

Circumstances for Testing

Pre-Employment

After a contingent offer of employment has been made, all applicants will be required to submit to and pass a urine drug test as a condition of employment. All applicants who test positive on a pre-employment drug test will not be considered for employment. Applicants may request in writing copies of any test results or records and will be provided records upon such a request.

Reasonable Suspicion

If an employee is having work performance problems or displaying behavior that may be alcohol or drug-related, or is otherwise demonstrating conduct that may be in violation of this Policy where immediate management action is necessary, a supervisor or manager, with the concurrence of the alcohol and drug program administrator, will require that employee to submit to a breath test or urinalysis.

All reasonable suspicion testing must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

All reasonable suspicion testing will take place within 8 hours of the observation or it shall be documented as to the delay.

All supervisors will receive training on reasonable suspicion, and all testing must be based on facts made during, just preceding, or just after the employees work period.

The supervisor shall, within 24 hours or before the results of the controlled substance test are released, document the particular facts related to the behavior or performance problems, and present such documentation to the alcohol and drug program administrator.

The alcohol and drug program administrator will ensure that the employee is transported to an appropriate collection site and thereafter to the employee's residence or, where appropriate, to a place of lodging. Under no circumstances will that employee be allowed to continue work duties until a confirmed negative test result is received by Town of Milliken.

Post-Accident/Incident

Occupational Safety and Health Administration (OSHA) rules prohibit "employers from using drug testing (or the threat of drug testing) as a form of adverse action against employees who report injuries or illnesses." Thus, Town of Milliken's post-accident/incident testing will be conducted only in those "situations in which employee drug use is likely to have contributed to the incident."

As such, a drug and/or alcohol test will be conducted on any covered employee involved in an accident resulting in injuries requiring medical treatment away from the site of the incident or damage to property. Tests will be conducted on those involved in the incident whose actions cannot be discounted as a contributing factor of the incident and only in situations where employee drug use is likely to have contributed to the incident.

Drug & Alcohol testing shall occur as soon after the injury as possible, but must be conducted within 8 hours for alcohol and within 32 hours for drugs. Documentation must be maintained in the event that testing doesn't occur within these timeframes.

Random

Random drug testing will be conducted on an unannounced basis on employees whose identifying information has been placed in a testing pool from which a scientifically valid selection is made. This process will select employees through the use of a computerized program.

Each covered employee in the random testing pool shall have an equal chance of being selected whenever a random selection is made regardless of whether the employee has been selected or tested previously.

The random testing program will be reasonably spaced throughout the calendar year.

Once notified, an employee must proceed immediately to the assigned collection site.

Non-DOT Random Alcohol Testing is only allowed by the American's with Disabilities Act (ADA) under very limited circumstances. Therefore, Town of Milliken will not conduct random alcohol testing.

Return-to-Duty and Follow-up Testing

It is the intent of Town of Milliken to comply with all federal and state regulations regarding drug and alcohol testing programs. An employee testing positive for drugs and/or alcohol will be immediately terminated unless otherwise directed by federal or state laws and regulations. Unless otherwise required employees will not be returned to the workplace and therefore "Return-To-Duty" and "Follow-Up" tests are not an option under this policy.

In the event a state or federal regulation requires a policy other than termination of employment the employee will be subject to treatment, discipline action, up to and including termination, return-to-duty testing, and follow-up testing as indicated by the Substance Abuse Professional assigned to their case. All Return-to-Duty and Follow-up Testing will comply with applicable State and Federal rules.

Refusal to Test

All refusals to test will be treated as a positive test and employees will be subject to discipline as outlined in this policy. Refusals include:

- Failing to cooperate with the testing process
- Attempting to or having a reported adulterated or substituted sample
- Failing to appear for a required test
- Failing to remain at the testing site until testing process is complete
- Failing to provide a sufficient amount of specimen
- Failing to provide a specimen
- If required, failing to permit a direct observation test
- Failing to take a second test if directed by the employer or collector
- Failing to cooperate with MRO verification process

Drug and Alcohol Testing Procedures and Laboratory Analysis

Breath alcohol testing

Unless otherwise specified in a state addendum, breath alcohol testing will be conducted either on site or at a prearranged location by a qualified Breath Alcohol Technician according to generally excepted scientific procedures. Only National Highway Traffic Safety Administration (NHTSA) approved devices or FDA-cleared devices may be used depending on the requirements of the state. Refusal to complete and sign the testing form or refusal to provide breath will be considered a positive test and employee will be subject to discipline as outlined in this policy. All tests will be conducted in compliance with the rules adopted by federal and/or state

guidelines. Unless otherwise directed by state regulations, all breath alcohol tests will follow procedures as established by SAMHSA/USDOT Regulations.

Specimen Collection

Specimen collection will be conducted in accordance with applicable state and federal laws. The collection procedures will be designed to ensure the security and integrity of the specimen provided by each covered employee, and those procedures will strictly follow appropriate chain-of-custody procedures. Moreover, every reasonable effort will be made to maintain the dignity of each covered employee submitting a specimen for analysis in accordance with these procedures. All tests will be conducted in compliance with the rules adopted by federal and/or state guidelines. Unless otherwise directed by state regulations, all specimen collections will follow procedures as established by SAMHSA/USDOT Regulations.

Laboratory Analysis

Unless otherwise specified, laboratory analysis will be conducted by a laboratory certified by The Department of Health and Human Services' (DHHS) Substance Abuse and Mental Health Services Administration (SAMHSA) to perform urinalysis for the detection of the presence of controlled substances will be retained by the Company. The laboratory will be required to maintain strict compliance with approved chain-of-custody procedures, quality control, maintenance, and scientific analytical methodologies. A list of certified labs can be found on the SAMHSA website.

Medical Review Officer

Any covered employee testing positive for the presence of a controlled substance will be contacted by the Company's MRO. The employee will be allowed to explain, contest, and present medical documentation to explain any permissible use of a drug as some prescription medications can result in a positive test. All such discussions between the employee and the MRO will be confidential. The Company will not be a party to, or have access to matters discussed between the employee and the MRO. If medically supportable reasons exist to explain the positive result, the MRO will report the test result to the Company as a negative. If during the course of discussions, the MRO learns of a medical condition or use of prescription medication that could, based on their reasonable medical judgement pose a safety risk, the MRO may inform the employer. Applicants may request in writing copies of any test results or records and will be provided records upon such a request.

Split Specimen Testing

Within 72 hours after the employee has been notified of a positive test result for drugs, he/she may request a retest of the split sample. This request will be provided to the MRO, who will then initiate the new laboratory analysis. If a different result is detected by the subsequent laboratory, the test will be voided by the MRO, and the company alcohol and drug program administrator will be notified. A retest may be initiated as appropriate.

Employee Rights

Following a positive test, covered employees have the following rights:

Right to know the result of the test

Right to have the split sample analyzed by a laboratory of their choice

Right to take 72 hours to provide written notice of their intent to have the split specimen analyzed

Responsibility to pay for expenses of a split specimen

Employee Assistance, Education, and Supervisor Training

Employee Assistance

Any covered employee in need of assistance in dealing with a drug or alcohol abuse is encouraged to contact the Drug and Alcohol Program Administrator. Professional resources and information in regards to available Employee Assistance Programs (EAP) will be made available. All inquiries will be treated as confidential and no disciplinary action will be taken for seeking assistance. Anyone seeking assistance is nonetheless expected to comply with all work rules including this policy.

Employee Education

Covered employees will be subject to awareness training to inform them of the dangers of drug and alcohol use in the workplace and will be advised of all available resources, including a copy of the policy, and employee assistance programs.

Supervisor Training

All supervisors will be subject to a drug and alcohol training program designed to recognize the signs of abuse, evidence of drug and/or alcohol usage, and documentation thereof.

Discipline

Positive Alcohol Test

Covered employees with alcohol tests results of a BAC of 0.02 or higher will be terminated from employment. In the event a state or federal regulation requires a policy other than termination of employment the employee will be subject to discipline action, up to and including termination, treatment, return-to-duty testing, and follow-up testing as indicated by the Employee Assistance Program (EAP) and/or Substance Abuse Professional (SAP) assigned to their case.

Positive Drug Test

Covered employees with positive test results for controlled substances not legally prescribed by a licensed medical professional will be terminated from employment. In the event a state or federal regulation requires a policy other than termination of employment the employee will be subject to discipline action, up to and including termination, treatment, return-to-duty testing, and follow-up testing as indicated by the Employee Assistance Program (EAP) and/or Substance Abuse Professional (SAP) assigned to their case

Refusal to Test

Covered employees who refuse to submit to testing, fail to cooperate with the test process or attempt to substitute or adulterate a sample will be terminated from employment. In the event a state or federal regulation requires a policy other than termination of employment the employee will be subject to treatment, return-to-duty

testing, and follow-up testing as indicated by the Employee Assistance Program (EAP) and/or Substance Abuse Professional (SAP) assigned to their case

Confidentiality

Release of Drug/Alcohol Related Information

Under no circumstances, unless required or authorized by law, will alcohol or drug testing information or results for any covered employee or applicant be released without written request from the applicant/employee.

Right to Obtain Records

Employees are entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substance tests.

Town of Milliken

Alcohol and Controlled Substance Receipt of Policy

I certify that I have received and understand the materials explaining Town of Milliken Alcohol and Controlled Substance Policy and the requirements all applicable state laws. I will present any questions I may have concerning this policy and these regulations to:

Kathryn "Kathy" Kindsfather
1101 Broad Street, Milliken, Colorado 80543
(970) 660-5040
kkindsfather@millikenco.gov

The Materials I have received include:

- 1) Company's Policy and Procedures

Employee's Name (printed)

Employee's Signature

Date

Town of Milliken D&A Policy

State Law Addendum

Colorado

State Summary: Town of Milliken intends to comply with all state laws, court case precedence, rules, and regulations. Colorado has no general drug & alcohol testing laws. This addendum applies to covered employees in Colorado. In addition to this addendum, covered employees will adhere Town of Milliken's general drug and alcohol testing policies. State rules will always govern over the company's general policy when in conflict.

State Classification: **Open** - Colorado is classified as an Open state in that it places no limitations or requirements on an employer's D&A Testing in the state. The company's general policy will apply in all areas.

Compliance with state laws may allow unemployment compensation denial and workers' compensation denial or reduction. Refer to Colorado Rev. Stat. 8-73-108 and 8-42-112 to 112.5.

**DEPARTMENT OF TRANSPORTATION (DOT)
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
(FMCSA)
CONTROLLED SUBSTANCE (DRUG) AND ALCOHOL
TESTING POLICY**

Town of Milliken

1101 Broad Street, Milliken, Colorado 80543

EFFECTIVE DATE: 01/28/2026

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1 STATEMENT OF POLICY

Pursuant to Part 382 of the Federal Motor Carrier Safety Regulations (FMCSR), the definition of the term “employee” includes all drivers.

All items contained in the below policy comply with the FMCSR unless otherwise identified as an industry best practice.

1.1 *Purpose and Goals*

Town of Milliken is dedicated to the health and safety of our drivers. Drug and/or alcohol use may pose a serious threat to driver health and safety. Therefore, it is the policy of Town of Milliken to prevent the use of drugs and abuse of alcohol from having an adverse effect on our drivers.

The serious impact of drug use and alcohol abuse has been recognized by the federal government. The Federal Motor Carrier Safety Administration (FMCSA) has issued regulations which require the Town of Milliken to implement an alcohol and controlled substances testing program.

The purpose of the FMCSA-issued regulations is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles (CMVs). The Town of Milliken will comply with these regulations and is committed to maintaining a drug-free workplace.

In accordance with 49 CFR §382.601(a), each employer shall provide educational materials that explain the requirements in Part 382 and the employer’s policies and procedures with respect to meeting these requirements. The employer 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 part and to each driver subsequently hired or transferred into a position with a safety-sensitive function (i.e., operating a CMV as defined in §382.107 requiring a CDL).

Each driver hired or transferring into a safety-sensitive function is responsible for reviewing the content of the information presented to drivers. Each driver is responsible for asking questions about the procedures if the content is unclear to him/her. Drivers may pose follow-up questions about the content of this policy and procedures to the Town of Milliken’s designated employer representative (DER) identified in Appendix B: DOT Drug and Alcohol Testing Resources and Service Providers.

1.2 *Employment Terms*

The implementation of this policy and its terms are not intended to modify the nature of the employment relationship at Town of Milliken, or to otherwise create any contract, expressed or implied, with any employee. Employment is at-will unless otherwise required by state and federal law or specified in Town of Milliken policy.

2 SCOPE

2.1 *Employees Subject to Testing*

The alcohol and drug testing required under this policy will apply to any individual who operates a commercial motor vehicle (CMV) in interstate or intrastate commerce in the United States (U.S.) and is subject to:

- Commercial driver's license (CDL) or permit requirements in Part 383 of the FMCSR;
- The Licencia Federal de Conductor (Mexico) requirements; or
- The commercial driver's license requirements of the Canadian National Safety Code.

Mexican- and Canadian-domiciled drivers operating CMVs in U.S. commerce are subject to U.S. DOT testing rules.

For purposes of this policy, a **CMV** is defined as a motor vehicle or combination of motor vehicles used to transport passengers or property which:

- Has a gross combination weight rating (GCWR) of 26,001 or more pounds (11,794 or more kilograms) inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 10,000 lbs. (4,536 kg.); or
- Has a GVWR of 26,001 or more pounds (11,794 kg.); or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of hazardous materials required to be placarded under the Hazardous Materials Transportation Act.

A **driver** subject to this policy will include any person who operates a CMV, including but not limited to the following:

- Full-time, regularly employed drivers;
- Casual, intermittent, or occasional drivers; and
- Leased drivers and independent, owner-operator contractors who are either directly employed by or under lease with Town of Milliken or who operate a CMV at the direction of or with the consent of Town of Milliken.

2.2 *Independent Contractors and Owner-Operators*

Because this alcohol and drug testing program is required by the FMCSR, it applies to any individual who operates a CMV on behalf of Town of Milliken under a contract, lease, or other agreement; however, mere compliance with the provisions of this policy or the application of this policy to any person shall not operate to convert any

independent contractor or other person into an employee of Town of Milliken unless other circumstances indicate the existence of an employer-employee relationship.

2.3 *Safety-Sensitive Functions*

The requirements of this policy are often dependent upon an individual's performance of a ***safety-sensitive function*** as defined in §382.107. Please refer to the *Definitions* section of this policy.

A driver will be considered to be performing any of the safety-sensitive functions listed in the *Definitions* section during any period in which the driver is actually performing, ready to perform, or immediately available to perform any such function.

3 DEFINITIONS

When implementing and interpreting the alcohol and drug policies and procedures required by the FMCSA, as well as the policies and procedures required by the Town of Milliken, the following definitions apply:

Actual knowledge means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the driver, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or a controlled substance, or a driver's admission of alcohol or controlled substance use under the provisions of §382.121. Direct observation as used in this definition means observation of alcohol or controlled substance use and does not include observation of driver behavior or physical characteristics sufficient to warrant reasonable suspicion testing under §382.307. As used in this section, "traffic citation" means a ticket, complaint, or other document regarding driving a CMV while under the influence of alcohol or controlled substances.

Adulterated specimen means a specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

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

Alcohol concentration means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

Alcohol screening device (ASD) means a breath or saliva device, other than an evidential breath testing device (EBT) that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on the Office of Drug and Alcohol Policy and Compliance's (ODAPC's) webpage for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA.

Alcohol use means the drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication), containing alcohol.

Alcohol Testing Form (ATF) means the DOT-prescribed form that must be used by the Town of Milliken's service agent to document any DOT alcohol test.

Alternate specimen means an authorized specimen, other than the type of specimen previously collected or attempted to be collected.

Breath alcohol technician (BAT) means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

Clearinghouse query means an electronic check in the Commercial Driver's License Drug and Alcohol Clearinghouse conducted by an employer or their designated consortium/third-party administrator (C/TPA), to determine if current or prospective employees are prohibited from performing safety-sensitive functions, such as operating a commercial motor vehicle (CMV), due to unresolved drug and alcohol program violations. Queries are either limited or full.

Collection site means a place selected by the employer where employees present themselves for the purpose of providing a specimen for a drug test.

Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) means a database, administered by the Federal Motor Carrier Safety Administration, containing records of commercial motor vehicle drivers' violations of controlled substances and alcohol testing program requirements, as set forth in Part 382, as well as their return-to-duty status.

Custody and control forms (CCFs) mean the Office of Management and Budget (OMB) approved Federal Drug Testing Custody and Control Form (CCF). The Town of Milliken's service agents must use this form to document drug testing.

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 paragraph (1) of this definition.

Confirmatory drug test means a second analytical procedure performed on a different aliquot of the original specimen to identify and quantify a specific drug or drug metabolite.

Confirmatory validity test means a second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Consortium/third-party administrator (C/TPA) is a service agent that provides or coordinates the provision of a variety of alcohol and drug testing services for the Town of Milliken. C/TPAs typically perform administrative tasks concerning the operation of the Town of Milliken's alcohol and drug testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT alcohol and drug testing programs of its members. C/TPAs are not "employers."

Controlled substances mean those substances identified in §40.82. In accordance with FMCSA rules, urinalyses will be conducted to detect the presence of the following substances:

- Marijuana metabolites
- Cocaine metabolites
- Amphetamines
- Opioids
- Phencyclidine (PCP)

Designated employer representative (DER) is an employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.

Dilute specimen means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

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

➤ **Inclusions**

- Damage to motor vehicles that could have been driven but would have been further damaged if so driven.

➤ **Exclusions**

- Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- Tire disablement without other damage even if no spare tire is available.
- Headlight or taillight damage.
- Damage to turn signals, horn, or windshield wipers which make them inoperative.

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

Drug means any substance (other than alcohol) that is a controlled substance as defined in this policy and Part 40.

Employer means a person or entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations. The term means 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 part and any applicable DOT agency regulations. Service agents are not considered employers for these purposes.

Evidential breath testing device (EBT) means 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 and appears on ODAPC's webpage for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

FMCSA means Federal Motor Carrier Safety Administration, U.S. Department of Transportation.

FMCSR means the Federal Motor Carrier Safety Regulations.

Full (Clearinghouse) query means a report that discloses to employers and designated C/TPAs detailed information about any resolved or unresolved violations in a driver's Clearinghouse record.

HHS (or DHHS) means the Department of Health and Human Services.

Initial drug test means the first test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial specimen validity test means the first test used to determine if a specimen is adulterated, diluted, substituted, or invalid.

Invalid result means the result reported by an HHS-certified in accordance with the criteria established by HHS when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory means any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards set by HHS; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under Part 40.

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.

Limited (Clearinghouse) query means checking for the presence of information on a driver in the Clearinghouse. Driver consent is obtained outside the Clearinghouse.

Medical Review Officer (MRO) is a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by the Town of Milliken's drug testing program and evaluating medical explanations for certain drug test results.

Negative result means the result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug, or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Non-negative specimen means a specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), or invalid.

Oral-fluid specimen means a specimen that is collected from an employee's oral cavity and is a combination of physiological fluids produced primarily by the salivary glands. An oral fluid specimen is considered to be a direct observation collection for all purposes of Part 40.

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

Positive result means the result reported by a HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

Prescription medications means the use (by a driver) of legally prescribed non-Schedule I medications issued by a licensed medical practitioner familiar with the driver's work-related responsibilities.

Primary specimen means in drug testing, the specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of specimen validity testing. The primary specimen is the portion of the donor's subdivided specimen designated as the primary ("A") specimen by the collector to distinguish it from the split ("B") specimen, as defined in this section.

Random selection process means that:

- Alcohol and drug tests are evenly spread throughout the year in testing cycles and are unannounced;
- Every driver of a motor carrier subject to testing has an equal chance of being tested; and
- Tests conducted annually shall equal or exceed the established percentages of the average number of drivers who are subject to testing for a motor carrier per Part 382.

Reasonable suspicion means that the motor carrier believes the actions, appearance, and/or conduct of an on duty CMV driver are indicative of the use of a controlled substance or alcohol.

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

- Fails to appear for any test (except pre-employment) within a reasonable time, as determined by the Town of Milliken, consistent with applicable DOT regulations, after being directed to do so by the Town of Milliken. This includes the failure of a driver (including an owner-operator) to appear for a test when called by a C/TPA;
- Fails to remain at the testing site until the testing is complete (except pre-employment if the driver leaves before the testing process begins);
- Fails to provide a specimen for any DOT-required drug test (except pre-employment if the driver leaves before the testing process begins);
- Fails to provide an adequate amount of saliva or breath for any DOT-required alcohol test (except pre-employment if the driver leaves before the testing process begins);
- Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures;
- Fails to sign the certification in Step 2 of the Alcohol Testing Form (ATF);
- 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 the specimen;
- Fails to provide a sufficient amount of specimen for drug testing when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Fails or declines to take a second test the employer or collector has directed the driver to take;
- 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);
- Fails 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);
- For an observed urine collection, fails to follow the observer's instructions to raise his/her clothing above the waist, to lower clothing and underpants, and to turn around to permit the observer to determine if he/she has any type of prosthetic or other device that could be used to interfere with the collection process;
- Possesses or wears a prosthetic or other device that could be used to interfere with the collection process;

- Admits to the collector or MRO that he/she adulterated or substituted the specimen; and/or
- Is reported by the MRO as having a verified adulterated or substituted test result.

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 include:

- 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 Town of Milliken;
- All time inspecting equipment as required by §392.7 and §392.8, or otherwise inspecting, servicing, or conditioning any CMV at any time;
- All time spent at the driving controls of a CMV in operation;
- All time, other than driving time, in or upon any CMV, except time spent resting in a sleeper berth (a berth conforming to the requirements of §393.76);
- 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
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test technician (STT) is a person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device (ASD).

Specimen means fluid, breath, or other material collected from an employee at the collection site for the purpose of a drug or alcohol test.

Split specimen means in drug testing, the specimen that is sent to a first laboratory and stored with its original seal intact, and which is transported to a second laboratory for retesting at the employee's request following MRO verification of the primary specimen as positive, adulterated or substituted.

Split specimen collection means a collection in which the single specimen collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

SSN or Employee ID No. means the number serving as a unique identifier that must be used on the Federal Drug Testing Custody and Control Form (CCF) or Alcohol Testing Form (ATF) for a donor, on the MRO's reports, on SAP reports, or on other documents that are required under

this part. For all purposes of this part, this term means: only the Commercial Driver's License (CDL) Number and State of issuance for drivers tested under the authority of the Federal Motor Carrier Safety Administration (FMCSA); and, for all drivers and other safety-sensitive employees tested under the authority of the other DOT agencies, this can be the individual's actual Social Security Number, a unique identifier issued by the employer, a State-issued identification card number, a State-issued driver's license number (including a CDL number) or any other State-issued or federally-issued identification number.

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

Substance abuse professional (SAP) is a person who evaluates employees who have violated a DOT alcohol and drug regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. A SAP must be:

- A licensed physician (Doctor of Medicine or Osteopathy);
- A licensed or certified social worker;
- A licensed or certified psychologist;
- A licensed or certified employee assistance professional;
- A state-licensed or certified marriage and family therapist; or
- A drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap>.

Substituted specimen means an employee's specimen not consistent with a normal human specimen, as determined by HHS (e.g., a urine specimen, with creatinine and specific gravity values that are so diminished, or so divergent that they are not consistent with normal human urine).

Undiluted (neat) oral fluid means an oral fluid specimen to which no other solid or liquid has been added. For example: A collection device that uses a diluent (or other component, process, or method that modifies the volume of the testable specimen) must collect at least 1 mL of undiluted (neat) oral fluid.

Urine specimen means urine collected from an employee at the collection site for the purpose of a drug test.

Verified test means a drug test result or validity testing result from a HHS-certified laboratory that has undergone review and final determination by the MRO.

4 ALCOHOL PROHIBITIONS

Part 382, Subpart B, prohibits any alcohol misuse that could affect performance of safety-sensitive functions. Alcohol prohibitions include:

- Use while performing safety-sensitive functions;
- Use during the four hours before performing safety-sensitive functions;
- Reporting for duty or remaining on duty to perform safety-sensitive functions with an alcohol concentration of 0.04 or greater;
- Use of alcohol for up to eight hours following an accident or until the driver undergoes a post-accident test; or
- Refusal to take a required test.

NOTE: Per FMCSR §382.505, a driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform, nor be permitted 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.

5 DRUG PROHIBITIONS

Part 382, Subpart B, prohibits any drug use that could affect the performance of safety-sensitive functions. Drug prohibitions include:

- Use of any drug, except when administered to a driver by, or under the instructions of, a licensed medical practitioner, who has advised the driver that a non-Schedule I controlled substance will not affect the driver's ability to safely operate a CMV. The use of marijuana under any state statute is not a legitimate medical explanation. Under federal law, the use of marijuana or any Schedule I drug does not have a legitimate medical use in the U.S. According to §40.151, a MRO is prohibited for rendering a negative test based on authorized recommendations such as usage of medical marijuana;
- Testing positive for drugs; or
- Refusing to take a required test.

6 QUALIFICATIONS FOR EMPLOYMENT

6.1 *Prohibited Conduct*

This Town of Milliken policy and the FMCSRs prohibit the following conduct as it specifically relates to alcohol and drug testing:

- No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater (§382.201 and §382.505).
- No driver may use alcohol while performing safety-sensitive functions (§382.205).
- No driver may perform safety-sensitive functions within four hours after having used alcohol (§382.207).
- No driver required to take a post-accident alcohol test under this policy may use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first (§382.209).
- No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance (§382.213).
- No driver may report for duty, remain on duty, or perform a safety-sensitive function, if the test is reported as positive for controlled substances, adulterated, or substituted (§382.215).
- No driver may refuse to submit to any alcohol or controlled substance test required under this policy (§382.211).

In the event Town of Milliken has actual knowledge that a driver has violated any of the above prohibitions, the driver will be prohibited from performing any safety-sensitive functions.

6.2 *Removal from Service*

A driver who has engaged in any prohibited conduct will be immediately removed from service and disqualified from the performance of any safety-sensitive functions, including driving a CMV, unless and until that driver has been certified as fit to return to work in accordance with the DOT return-to-duty requirements.

Any driver requested to submit to an alcohol test required under this policy and found to have an alcohol concentration of 0.02 will be disqualified from performing or continuing to perform any safety-sensitive functions, including driving a CMV, immediately.

6.3 Prescribed Medications

The prohibitions outlined above do not apply to the use of a non-Schedule I controlled substance pursuant to the instructions of a licensed medical practitioner who is familiar with the driver's medical history and assigned duties, and has advised the driver that the substance will not adversely affect his/her ability to safely operate a CMV.

NOTE: The MRO is authorized to question the use of a non-Schedule I medication, despite a negative DOT drug test result, if the MRO believes there is a medical qualification issue or safety risk. The MRO will speak with the driver about the concerns. The driver will have 5 days, from the reported negative result, to speak with the prescribing physician about getting another medication that is more acceptable to the MRO. If the 5 days expire or no alternative medication is available based on the prescribing physician, the MRO must report the possible medical disqualification in accordance with §40.327 to all the relevant entities that are applicable to the situation, such as a medical examiner, employer, substance abuse professional, FMCSA, and the National Transportation Safety Board, in the course of an accident investigation. The MRO will not address the medical information using the CCF. Instead, the MRO must provide the information in a separate written communication (e.g., letter, secure email). The information must state the specific nature of the MRO's safety concern (e.g., the effects of a medication the driver is taking, the driver's underlying medical condition that the driver disclosed to the MRO).

6.4 DOT Alcohol and Drug Testing History

Any driver Town of Milliken intends to hire or use to perform a safety-sensitive function will be required to undergo a background check to determine his/her compliance with the alcohol and drug prohibitions of the FMCSR during the previous three years.

No driver will be allowed to perform a safety-sensitive function if Town of Milliken discovers that he/she has had an alcohol test with a concentration of 0.04 or greater, a verified positive drug test result, or has refused to be tested, unless and until Town of Milliken confirms that the driver has undergone an assessment by a substance abuse professional (SAP), has complied with any recommendations the SAP may have made with respect to rehabilitation, and has passed return-to-duty alcohol and/or drug tests.

6.4.1 FMCSA FORMER EMPLOYERS

As required under §382.413, Town of Milliken will use the following procedures:

- Pre-employment Clearinghouse queries on CDL applicants are the sole means of learning of any previous FMCSA testing violations.
- When the Clearinghouse indicates that a DOT violation exists, but the record does not show the completion of a return-to-duty program

and/or follow-up testing plan, Town of Milliken will contact the former FMCSA employers directly for additional information.

6.4.2 NON-FMCSA DOT-REGULATED FORMER EMPLOYERS

As required under §382.413, Town of Milliken will use the following procedures:

- If the employee worked under another mode of DOT transportation and was tested under 49 CFR Part 40, Town of Milliken will reach out to the former employer since this information will not be housed in the Clearinghouse.
- When Town of Milliken learns of a DOT violation through the non-FMCSA DOT-regulated former employer, it will contact the former employer for additional information if an inquiry does not show that the return-to-duty and/or follow-up testing plan was completed.

6.4.3 SPECIFIC WRITTEN CONSENT

All drivers will be required to sign an appropriate consent form authorizing other parties to release the information to Town of Milliken. Examples include:

- Consenting to questions on DOT testing history sent to former non-FMCSA DOT-regulated employers.
- Requests for information on completed steps in the return-to-duty and follow-up testing programs, which are sent to former DOT-regulated employers and substance professionals.

6.4.4 CLEARINGHOUSE QUERIES

Town of Milliken is required by federal regulations to request two types of queries in the Clearinghouse:

- Pre-employment
- Annual

Each query requires consent from the driver.

Town of Milliken will request a full query on all driver applicants to satisfy the pre-employment requirement. The annual query performed by the motor carrier will be a limited report in accordance with the regulations. In the event the limited query shows the driver has data in the Clearinghouse, Town of Milliken must request a full query to learn of any resolved or unresolved violations in a driver's Clearinghouse record.

6.4.5 DRIVER'S CONSENT

Before the Clearinghouse will release the driver's Clearinghouse report, Town of Milliken must obtain consent from the driver.

Drivers must provide consent to Town of Milliken for any query. If the driver refuses, Town of Milliken is unable to use the driver in a safety-sensitive function.

- For **limited queries**, meaning the report states whether information exists with no additional details, the driver may give the employer written or electronic consent. If the limited query shows there is data available, a full query is required within 24 hours of the limited query.
- For **full queries**, the data may not be released unless the driver submits an electronic consent in the Clearinghouse, granting permission to access specific records. To provide this authorization, the driver must create an account within the Clearinghouse. A full query provides additional details on a violation or the status of the return-to-duty process and follow-up testing.

To create a portal account, please visit <https://clearinghouse.fmcsa.dot.gov>.

6.4.6 FMCSA NOTIFICATIONS AND FOLLOW-UP QUERIES

The FMCSA will notify Town of Milliken if a driver's Drug & Alcohol Clearinghouse record changes within 12 months after the last query.

Changes in a driver's Clearinghouse record that might prompt an alert from the FMCSA include:

- A new violation (failed test, actual knowledge, or a refusal to test);
- An entry from a substance abuse professional (SAP);
- A negative return-to-duty test; or
- A completed follow-up testing program.

When Town of Milliken receives an alert that a driver's record has changed, it will:

- Request a full follow-on query within 24 hours; and
- Verify the driver's status (prohibited or not prohibited).

Town of Milliken will pull the driver from safety-sensitive functions if an unresolved testing violation is discovered.

To obtain more information, Town of Milliken will perform a full query in the Clearinghouse. A full query requires that the driver provide consent through a personal Clearinghouse account. If a driver does not have an account, one must be created quickly.

Once a query request is made, the driver must consent. If the driver fails to create an account or refuses to consent, the driver cannot return to safety-sensitive functions until the issue is resolved.

If the full query shows an unresolved testing violation, the driver cannot return to safety-sensitive functions until the necessary return-to-duty steps are completed and submitted to the Clearinghouse.

If the change to the record was the result of the completion of a follow-up testing program or the entry of a negative return-to-duty test (Not Prohibited status), the driver can continue to perform safety-sensitive functions.

6.4.7 AVAILABILITY OF DATA IN THE CLEARINGHOUSE

Information about a driver's drug or alcohol violation will no longer be disclosed to an employer conducting a Clearinghouse query after all the following conditions relating to the violation are satisfied:

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

Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all of the above requirements have been met.

6.4.8 DRIVER'S RIGHTS

The FMCSR provide drivers with due process rights.

As a result, drivers are given:

- Free access to the Clearinghouse;
- Notification when data is requested on them; and
- A process to challenge inaccurate information.

The FMCSA will notify a driver when information has been:

- Added to, revised, or removed from the Clearinghouse about him or her; and
- Released from the Clearinghouse to an employer and specify the reason for the release.

The FMCSA will contact drivers through:

- A letter sent by U.S. mail to the address on record with the state driver's licensing agency that issued the driver's commercial driver's license (CDL); or
- An alternative means or address for notification, including electronic mail provided by the driver to the Clearinghouse.

A driver may request the removal of administrative errors (e.g., errors in data entry or a duplicate report of a positive test result). Drivers may not contest the accuracy of test results, test refusals, or other violation information.

Drivers may request that FMCSA add documentary evidence of a non-conviction to an employer's report of actual knowledge that the driver received a traffic citation for driving a CMV requiring a CDL while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR Part 383.

Drivers may request that the FMCSA remove from the Clearinghouse:

- An employer's report of actual knowledge if that report does not comply with the reporting requirements in §382.705(b)(5). Note that this does not apply to a report of driving under the influence while operating a CDL CMV; and
- An employer's report of a violation under 49 CFR §40.261(a)(1) or §40.191(a)(1) if that report does not comply with the reporting requirements in §382.705(b)(3).

The FMCSA will make a decision to remove, retain, or correct information in the database within 45 days of receiving the driver's petition. The driver may ask for expedited treatment if the inaccuracy is preventing him or her from performing a safety-sensitive function. If the agency grants the expedited petition, the FMCSA will notify the driver of its decision within 14 days.

If the driver feels a decision is in error, he or she has one more opportunity to prove his or her case. Through an Administrative Review, the driver would have to explain why the original decision was in error. The FMCSA will come to a final decision no later than 30 days following the submission of the Administrative Review.

6.4.9 STATE LICENSING AGENCIES

By applying for a CDL, a driver is deemed to have consented to the release of the Clearinghouse information to the state licensing agency.

The FMCSA requires state driver's licensing agencies to deny CDL and CLP issuance, renewal, upgrade, or transfer for any driver that has an unresolved violation (prohibited status) in the Clearinghouse. Additionally, existing CDL and CLP holders will have their licenses downgraded while they are in prohibited status in the Clearinghouse. Drivers can have their prohibited status removed by completing the return-to-duty process, which includes being evaluated by a substance abuse professional, completing required education and/or treatment, and having a negative return-to-duty drug and/or alcohol test.

The requirement to downgrade CDLs and CLPs went into effect on November 8, 2021, and states were required to comply no later than November 18, 2024.

6.4.10 PREVIOUS PRE-EMPLOYMENT TESTING VIOLATIONS

Each driver applicant will be asked whether he/she has tested positive, or refused to test, on any DOT pre-employment drug or alcohol test administered by an employer to which the driver applicant applied for, but did not obtain, safety-sensitive transportation work during the past two years. This applies to positions under any mode that is subject to 49 CFR Part 40 testing.

If the driver applicant admits that he/she has tested positive, or refused to test, on any DOT pre-employment test, the driver applicant may not perform any safety-sensitive functions for the Town of Milliken until and unless the driver applicant documents successful completion of the return-to-duty process.

7 TESTING CIRCUMSTANCES

7.1 *Notice of Testing Circumstances*

Before performing any alcohol or controlled substances test under this policy, Town of Milliken will notify a driver that the test is being required pursuant to this policy and the FMCSR; however, Town of Milliken will not represent that any requested test is required by federal regulations, if in fact, the individual to be tested is not subject to those regulations.

7.2 *Pre-Employment Testing*

In accordance with §382.301, all driver applicants will be required to submit to and pass a DOT pre-employment drug test as a condition of employment.

Town of Milliken requires the pre-employment drug testing method to be testing of urine specimen. Town of Milliken reserves the right to use an alternative testing method. Driver applicant pre-employment drug testing shall follow the collection, chain-of-custody, and reporting procedures set forth in 49 CFR Part 40.

An employee of Town of Milliken transferring to a safety-sensitive driving position is also subject to, and must pass, a drug test as a condition of the transfer.

Prior to the first time a driver performs a safety-sensitive function for Town of Milliken (including job applicants and employees transferring into a position requiring the operation of a CMV), the driver will be required to undergo testing for controlled substances and **will not be allowed to perform any such function unless and until a verified negative drug test result is received from the MRO.**

In the event a driver has been relieved of duty for more than 30 days and has been removed from the driver's random pool, a returning driver will be required to submit to and pass a drug test with a required negative test result prior to the start of any safety-sensitive position.

7.3 *Post-Accident*

Drivers are to notify the designated employer representative (DER) as soon as possible when involved in any type of accident while operating a CMV as defined in §382.107 (performing a safety-sensitive function).

Town of Milliken requires the post-accident drug testing method to be testing of urine specimen. Town of Milliken reserves the right to use an alternative testing method.

According to FMCSA regulations (§382.303), if the accident involved the following, the driver will be tested for drugs and alcohol as soon as possible following the accident when:

- The accident involved a fatality; or
- The driver received a citation under state or local law for a moving traffic violation arising from the accident and the accident involved:
 - Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - One or more motor vehicles incurring **disabling damage** as a result of the accident, requiring the vehicle to be towed away from the scene by a tow truck or other vehicle.

The term accident does not include:

- An occurrence involving only boarding and alighting from a stationary motor vehicle; or
- An occurrence involving only the loading or unloading of cargo; or
- An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in §571.3) by a motor carrier not 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.

Drivers are prohibited from using alcohol for eight hours following any accident or until the required post-accident alcohol test is administered, whichever occurs first. Every effort will be made to conduct post-accident alcohol and drug tests within two hours following an accident. If the test is not administered within two hours, Town of Milliken will prepare and maintain a record stating why the test was not promptly administered. Any driver involved in an accident must therefore remain readily available for testing and will be considered to have refused to submit to testing if he/she fails to do so.

This requirement will not, however, require a driver to delay any necessary medical attention for injured people following an accident or to remain at the scene of an accident when his/her absence is necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care. In order to ensure expeditious testing, we will provide all drivers with information, procedures, and instructions explaining our post-accident testing requirements. These instructions will be distributed to each driver prior to his/her operation of a vehicle covered by this policy.

If an alcohol test is not administered within eight hours following an accident, Town of Milliken will make no further effort to administer an alcohol test and will document the reasons why the test was not administered within eight hours.

In the event a drug test is not administered within 32 hours following an accident, Town of Milliken will cease its attempts to administer any further testing and prepare and maintain a record stating the reasons why the test was not promptly administered.

The results of any breath or blood alcohol test or a urine test for the use of controlled substances, conducted by federal, state, or local officials having independent authority for the test, will be considered to meet the requirements of this section, provided such tests conform to applicable federal, state, or local requirements, and the results of the tests are obtained by Town of Milliken and/or their consortium/third-party administrator (C/TPA).

7.4 Random

Both Town of Milliken and the DOT believe that random alcohol and drug testing is an essential part of any program seeking to ensure an alcohol-free and drug-free transportation system. According to §382.305, all CDL drivers subject to this policy will be required to submit to DOT random alcohol and drug testing.

Town of Milliken requires the random drug testing method to be testing of urine specimen. Town of Milliken reserves the right to use an alternative testing method.

Town of Milliken will conduct random alcohol and drug tests at the minimum annual percentage rate established by the FMCSA in Part 382 based on the average number of driver positions.

The administration of the random selection process will be completely objective, anonymous, and utilize a scientifically valid method such as a random number table or a computer-based random number generator matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. The tests will be unannounced, and the dates for testing will be reasonably spread throughout the course of the year. All drivers will have an equal chance of being tested at any time, regardless of the number of his/her previous selections.

Any driver notified of his/her selection for random alcohol and/or controlled substances testing will be expected to proceed to the test site immediately. If a driver is performing a safety-sensitive function, other than driving, at the time of his/her notification of a random test requirement, he/she will be required to cease performing the safety-sensitive function and proceed to the testing site as soon as possible.

A driver will only be required to submit to a random alcohol test if the driver is performing a safety-sensitive function, is about to perform a safety-sensitive function, or has just ceased performing a safety-sensitive function.

In the event Town of Milliken requires non-DOT employees to submit to random drug testing, those employees will be selected for testing from a random testing pool that is separate and distinct from any pool containing CDL drivers subject to FMCSA-mandated random testing.

7.5 Reasonable Suspicion

In accordance with §382.307, whenever Town of Milliken has reasonable suspicion to believe that a driver has engaged in prohibited conduct, the driver must submit to an alcohol and/or controlled substances test.

Town of Milliken requires the reasonable suspicion drug testing method to be testing of urine specimen. Town of Milliken reserves the right to use an alternative testing method.

Any such suspicion must be based upon specific, contemporaneous, articulate observations concerning the appearance, behavior, speech, or body odors of the driver, which may include indications of the chronic and withdrawal effects of controlled substances.

These observations will only be made by a supervisor or Town of Milliken official who has received appropriate training in accordance with §382.603 and will be documented by that individual in a Supervisor's Report of Reasonable Suspicion within 24 hours after his/her observations, or before any drug test results are released.

Any person who makes a determination that reasonable suspicion exists to require a driver to submit to an alcohol test will not be permitted to conduct the alcohol test for that driver. A reasonable suspicion alcohol test will only be required if the reasonable suspicion observations are made during, just preceding, or just after the period of the work day that a driver is required to be in compliance with this policy.

Per FMCSA regulation, reasonable suspicion alcohol testing is only authorized if the observations are made during, just preceding, or just after the driver performing a safety-sensitive function.

Per FMCSA regulation, if the driver tests 0.02 or greater, but less than 0.04, for alcohol, the driver will be removed from all safety-sensitive functions, including driving a CMV, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

If an alcohol test is not administered within two hours following a reasonable suspicion determination, the program administrator will prepare and maintain a record stating the reasons why the test was not administered within two hours.

If the test was not administered within eight hours after a reasonable suspicion determination, all attempts to administer the test shall cease, and Town of Milliken will prepare and maintain a record of why the test was not administered promptly.

Notwithstanding the above testing requirements, a driver may not report for duty or remain on duty requiring the performance of a safety-sensitive function if that driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse.

In any reasonable suspicion testing circumstance, a Town of Milliken representative will transport the individual to an appropriate collection facility and await the completion of the collection procedure. The Town of Milliken representative will then transport the individual back to Town of Milliken's premises, where a spouse, family member, or other individual will be contacted to transport the individual home. In the event no one is available to provide transportation, Town of Milliken will contact a taxi to transport the driver home. If the reasonable suspicion test result is negative, Town of Milliken will reimburse the employee for the cost of the taxi. If the employee refuses to comply with any of these procedures and attempts to operate a vehicle, Town of Milliken will make appropriate efforts to discourage him/her from doing so, up to and including contacting local law enforcement officials. Any employee failing to cooperate with any of the above procedures will be subject to discipline, up to and including termination, unless prohibited by federal or state law.

7.6 *Return-to-Duty*

According to §382.309, after failing an alcohol test, a driver must undergo a return-to-duty test prior to performing a safety-sensitive function. The test result must indicate a breath alcohol concentration of less than 0.02.

After testing positive for a controlled substance, a driver must undergo a return-to-duty drug test under direct observation prior to performing a safety-sensitive function. The test must indicate a verified negative result for drug use. Town of Milliken requires the return-to-duty drug testing method to be testing of urine specimen. Town of Milliken reserves the right to use an alternative testing method.

After refusing to take a DOT-required drug and/or alcohol test, or when there is actual knowledge of drug or alcohol use as defined in §382.107, the driver must undergo a return-to-duty drug and/or alcohol test. An alcohol test result must indicate a breath alcohol concentration of less than 0.02. A drug test must indicate a verified negative result for drug use.

There may be occasions that an evaluation by a substance abuse professional reveals both a drug and alcohol abuse, and the driver may be called upon to take both test types as a part of the return-to-duty process even though the driver only failed a drug or alcohol test.

7.7 Follow-Up

Following the driver's violation of Part 382, Subpart B, the driver will be subject to follow-up testing after returning to duty. According to §382.311, follow-up testing will be unannounced. The number and frequency of such follow-up testing will be directed by the SAP and consist of at least six tests in the first 12 months. Follow-up testing may be done for up to 60 months. Follow-up drug tests must be conducted under direct observation.

Town of Milliken requires the follow-up drug testing method to be testing of urine specimen. Town of Milliken reserves the right to use an alternative testing method.

7.8 Refusal to Test

In accordance with §382.211, any driver who refuses to submit to any drug or alcohol test required by this policy will be immediately removed from service and prohibited from performing or continuing to perform a safety-sensitive function. Employees will also be subject to any disciplinary action outlined in this policy. For purposes of this policy, refusal to submit to an alcohol or controlled substances test will include:

- Failing to provide adequate breath for alcohol testing, without a valid medical explanation, after a driver has received notice of a required breath test;
- Failing to provide an adequate specimen for controlled substances testing, without a genuine inability to provide a specimen (as determined by a medical evaluation), after a driver has received notice of a required test;
- Engaging in conduct that clearly obstructs the testing process, including the failure or refusal to sign any document or form required under this policy, or by any party authorized to carry out testing under this policy;
- Engaging in any conduct that creates reason to believe that a drug-testing specimen has been altered, substituted, or adulterated for the purpose of affecting the validity or accuracy of a controlled substance test result; and

- Failing to report for required testing; or failing to report within a reasonable time after notification to do so.

7.9 On-Duty Time

An employee's time spent providing a breath sample or drug-testing specimen, including travel time to and from a collection site, in order to submit to random, reasonable suspicion, post-accident, or follow-up testing required under this policy will be considered on duty time.

7.10 Dilute Urine Specimens

If the MRO informs the Town of Milliken that a positive drug test was dilute, Town of Milliken will simply treat the test as a verified positive test. In accordance with §40.197, the Town of Milliken will not direct the employee to take another test based on the fact that the specimen was dilute.

If the MRO directs the Town of Milliken to conduct a recollection under direct observation due to a negative dilute — with a creatinine concentration of the specimen being equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL (see §40.155(c)) — Town of Milliken will do so immediately. Preferred testing method for recollection will be urine specimen. Town of Milliken reserves the right to use an alternative testing method.

The following provisions apply to all tests that Town of Milliken sends the driver for under the direction of the MRO:

- The employee is given the minimum possible advance notice that he or she must go to the collection site;
- The result of the retest taken under §40.197(b)(1), and not a prior test, is accepted as the test result of record;
- If the result of the retest taken under §40.197(b)(1) is also negative and dilute, Town of Milliken will not make the employee take an additional test because the result was dilute; and
- If the employee declines to take a test as directed in accordance with §40.197(b)(1), the employee has refused the test for purposes of Part 40 and DOT agency regulations.

8 CONFIDENTIALITY IN RECORDKEEPING [PART 40 SUBPART P]

8.1 Confidentiality

Town of Milliken will maintain all records generated under this policy in a secure manner so that disclosure to unauthorized persons does not occur. Thus, the results of any tests administered under this policy and/or any other information generated pursuant to this policy will not be disclosed or released to anyone without the specific written consent of the employee, except where otherwise required or authorized by law. In addition, Town of Milliken's contract with its designated laboratory requires all employee test records to be maintained in confidence.

The laboratory or Town of Milliken may disclose information required to be maintained under this policy to the employee, the employer, or the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or drug test administered under this policy, or from the employer's determination that the employee engaged in conduct prohibited by this policy (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

8.2 Access to Facilities and Records

Upon written request by any covered employee and in accordance with §40.329 and §382.405, Town of Milliken or its service agents will promptly provide copies of any records pertaining to the employee's use of alcohol or drugs, including any records pertaining to his/her alcohol or drug tests. The employee will be required to pay the employer a fee for the requested documents, unless prohibited by federal or state law.

Town of Milliken will also permit access to all facilities utilized and alcohol or drug testing documents generated in complying with Part 382 requirements to the Secretary of Transportation, any DOT agency with regulatory authority over the employer or any of its covered employees, or to a state oversight agency. When requested by the National Transportation Safety Board as part of an accident investigation, Town of Milliken will disclose information related to the employer's administration of a post-accident alcohol and/or drug test administered following the accident under investigation.

Records will also be made available to an identified person or a subsequent employer upon receipt of a specific written request from an employee, but only as expressly authorized and directed by the terms of the employee's specific written consent. The subsequent release of such information by the person receiving it will be permitted only in accordance with the terms of the employee's consent.

9 EDUCATION AND TRAINING

9.1 *Employee Education*

According to §382.601, Town of Milliken must provide employees subject to this policy with educational materials explaining the requirements of the DOT alcohol and drug testing regulations and the Town of Milliken policies and procedures for meeting them. In addition, employees will be provided with information concerning the effects of drug use and alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee's or a co-worker's); and available methods of intervening when an alcohol or drug problem (the employee's or a co-worker's) is suspected, including confrontation, referral to an employee assistance program, and/or referral to management. This information will include display and distribution of informational material.

Copies of the above materials and this policy will be distributed to each covered employee prior to the start of any DOT alcohol and/or drug testing required herein, and to each employee subsequently hired or transferred into a position requiring the performance of a safety-sensitive function covered by this policy. Each employee who receives a copy of these materials will be required to sign a statement certifying that he or she has received a copy of the same. Town of Milliken will retain the original of the signed certificate, and will provide a copy to the employee, if requested. Town of Milliken will also provide written notice to representatives of employee organizations as to the availability of this information, if applicable.

9.2 *Supervisor Training*

Every individual designated to determine whether reasonable suspicion exists to require a covered employee to undergo a drug or alcohol test under this policy will be required to receive at least 60 minutes of training on alcohol misuse and 60 minutes of training on drug use under FMCSR §382.603. This training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and prohibited drug use, and will cover reasonable suspicion. This training will also include the policies of Town of Milliken, and how they correlate with the regulations.

10 ASSISTANCE PROGRAM/SUBSTANCE ABUSE PROFESSIONAL (SAP)

10.1 Referral, Evaluation, and Treatment

10.1.1 AVAILABLE RESOURCES

Any employee who engages in conduct prohibited by this policy will be provided with information about the resources available for evaluating and resolving problems associated with the misuse of alcohol or prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs), and counseling and treatment programs.

10.1.2 SUBSTANCE ABUSE EVALUATION

Drivers will be advised to undergo an evaluation by an appropriate SAP, who will determine what, if any, assistance the employee may need in resolving problems associated with alcohol misuse and/or prohibited drug use. This requirement will apply regardless of whether such conduct is discovered as a result of a positive drug or alcohol test, independent employer knowledge, or a voluntary admission by the employee.

10.1.3 SUBSTANCE ABUSE PROFESSIONAL (SAP)

For purposes of this policy, an SAP is defined as a licensed physician (MD or DO), or a licensed or certified psychologist, social worker, employee assistance professional, certified marriage and family therapist, or a drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap> who has knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The SAP's role is to evaluate the driver's need for assistance in resolving problems related to alcohol or drug abuse, determine if the employee has complied with any recommended treatment or rehabilitation, and to determine a program of follow-up testing as appropriate. The SAP, who is otherwise fully qualified under Part 40, must not perform evaluations outside the geographic jurisdiction for his/her credential(s).

The following link is a great resource for helping locate a SAP in your driver's area - <https://www.saplist.com/>

10.2 Self-Identification Program

Town of Milliken has established an employee admission policy that permits covered employees to self-identify drug use or alcohol abuse without DOT consequences.

In order to utilize the employee admission policy, the driver:

- Cannot self-identify in order to avoid testing under the requirements of Part 382;
- Must make the admission of alcohol misuse or controlled substances use prior to performing a safety-sensitive function (i.e., prior to reporting for duty); and
- Cannot perform a safety-sensitive function until the employer is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

The self-identification program:

- Prohibits Town of Milliken 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 §382.121(a);
- Allows the employee sufficient opportunity to seek evaluation, education, or treatment to establish control over the employee's drug or alcohol problem;
- Permits 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); and
- Ensures that:
 - Prior to the employee participating in a safety-sensitive function, the employee undergoes a return-to-duty test with a result indicating an alcohol concentration of less than 0.02; and/or
 - Prior to the employee participating in a safety-sensitive function, the employee undergoes a return-to-duty controlled substance test with a verified negative test result for controlled substances use.

Town of Milliken is also incorporating employee monitoring to include non-DOT follow-up testing as allowed in §382.121.

11 DISCIPLINARY ACTION (EMPLOYEE OR INDEPENDENT CONTRACTOR)

A positive test will result in discipline up to and including termination, as allowed by state law. A positive pre-employment test will be a disqualifier for employment when allowed by state law. All applicable state laws will be followed. Town of Milliken has a one-strike policy for current employees who test positive for the first time. Costs associated with employee's substance abuse program administration and return to duty process shall be the responsibility of the employee.

12 RECORDKEEPING AND REPORTING

12.1 *Retention of Records*

Town of Milliken will maintain records relating to this policy as outlined in §382.401 and §40.333. These records will be maintained in a secure location (locked file cabinet or password protected data) with controlled access for the specified periods of time measured from the date of the document's or data's creation.

12.2 *Management Information System Reporting*

When required by the FMCSA, Town of Milliken will prepare and submit an annual statistical report, in the format prescribed by the FMCSA, detailing Town of Milliken's controlled substances and alcohol testing program activity.

12.3 *CDL Drug and Alcohol Clearinghouse*

Town of Milliken and its service providers must report DOT drug and alcohol testing program violations to the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse). Motor carriers, medical review officers (MROs), third-party administrators (TPAs), and substance abuse professionals (SAPs) must provide information when a driver:

- Tests positive for drugs or alcohol;
- Refuses drug or alcohol testing; and
- Undergoes the return-to-duty drug and alcohol rehabilitation process.

The following records will be collected and maintained in the Clearinghouse:

- A verified positive, adulterated, or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to any test required by Subpart C of Part 382;
- An employer's report of actual knowledge, as defined in §382.107, including:
 - On duty alcohol use pursuant to §382.205;
 - Pre-duty alcohol use pursuant to §382.207;
 - Alcohol use following an accident pursuant to §382.209;
 - Controlled substance use pursuant to §382.213; and
 - A citation issued for driving a CDL CMV while under the influence of drugs or alcohol.
- A SAP's report of the successful completion of evaluation and treatment;
- A negative return-to-duty test; and
- An employer's report of completion of follow-up testing.

The Clearinghouse will aid the Town of Milliken in learning of a driver's need to start or continue with the necessary steps in the DOT return-to-duty process (i.e., SAP program).

12.4 Data Submissions

12.4.1 MEDICAL REVIEW OFFICERS

Within two business days of determining that a driver has violated DOT testing rules in Part 382, MROs must report to the Clearinghouse all:

- Verified positive, adulterated, or substituted drug test results;
- Refusals to test (drugs), including inadequate specimen situations without a valid medical explanation; and
- Driver admissions to the MRO of adulterated and substituted specimens.

Within one business day of making any changes to a test result, MROs must report them to the Clearinghouse.

12.4.2 MOTOR CARRIERS

Motor carriers have specific reporting obligations for the Clearinghouse.

By the end of the third business day that motor carriers learn of specific information, they must submit it to the database.

Town of Milliken has designated a consortium/third-party administrator (C/TPA) to enter the employer's submission of data as it relates to drivers' alcohol or drug use.

Information that the MRO is not privy to must be reported by the motor carrier, including:

- Alcohol test results with a confirmed alcohol concentration of 0.04 or greater; and
- Certain refusal-to-test scenarios for drug or alcohol tests.

Examples of refusals-to-test under Part 382 that the motor carrier must report include:

- Refusing to go to the testing site once notified;
- Not showing up for a test;
- Arriving late for a scheduled test;
- Leaving the collection site without providing an adequate specimen;

- Failing to cooperate with the testing procedures; and
- Admitting to the collector of an adulterated or substituted drug test specimen.

Refusals associated with alcohol testing that the employer must report include:

- Inadequate amounts of saliva without valid medical reason; and
- “Shy lung” episodes, without a valid medical explanation.

Actual knowledge of violations (as defined in §382.107) must also be reported by the motor carrier within three days, including:

- Alcohol use before and/or during on duty time;
- Alcohol use following an accident; and
- Controlled substance use.

A motor carrier must report the violation to the Clearinghouse when it learns of a traffic citation issued while operating a CMV requiring a CDL indicating either:

- Use of a controlled substance; and/or
- An alcohol concentration of 0.04 or greater.

The status of the follow-up testing is also tracked by the Clearinghouse via employers. They are required to report negative return-to-duty tests and successful completion of all follow-up tests.

12.4.3 SUBSTANCE ABUSE PROFESSIONALS

In order to enter information into the Clearinghouse on behalf of a driver, the driver must designate a substance abuse professional (SAP).

Within one business day, the SAP must notify the Clearinghouse when he or she has:

- Completed the initial assessment following a DOT drug and/or alcohol violation; and
- Made the determination that the driver has successfully completed the return-to-duty process (assessments, treatment, and education).

At this stage, the SAP would issue a letter to the employer indicating the driver is ready for return-to-duty testing and the prescribed follow-up testing.

12.5 *Driver's Self-Reporting*

A CDL driver that has violated DOT drug and alcohol testing requirements must notify all current employers under which the violation did not occur. This may be instances when the driver works for more than one employer or is actively applying for other safety-sensitive positions and tests positive on a pre-employment test.

This notification must be made in writing to the current employers before the end of the business day following the day that he or she received notification of the violation.

13 APPENDICES

- Appendix A: Effects of Alcohol and Drugs
- Appendix B: DOT Drug and Alcohol Testing Resources and Service Providers
- Appendix C: Part 40 Requirements
- Appendix D: Clearinghouse Consent for Limited Queries
- Appendix E: Receipt for DOT Drug and Alcohol Testing Policy

13.1 Appendix A: Effects of Alcohol and Drugs

Section 382.601(b)(11) mandates that all employees be provided with training material discussing the effects of alcohol and controlled substance use on an individual's health, work, and personal life.

This appendix is intended to help individuals understand the personal consequences of substance abuse.

ALCOHOL

Although alcohol is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings, alcohol is widely abused primarily due to its social acceptance and availability. Abuse occurs when alcohol is used for its physical and mood-altering effects. The physical or mental alterations in a driver may have serious personal and public safety risks.

Signs and Symptoms of Use

- Dulled mental processes;
- Lack of coordination;
- Odor of alcohol on breath;
- Pupils may be constricted;
- Sleepy or stuporous condition;
- Slowed reactions; and
- Slurred speech.

Health Effects

Consuming an average of three or more servings per day of beer (12 oz.), whiskey (1 oz.), or wine (6 oz.) over time, may result in the following health hazards:

- Liver damage;
- Inflammation of the esophagus;
- Aggravation of peptic ulcers;
- Acute and chronic pancreatitis;
- Malabsorption of food nutrients that may lead to malnutrition;
- Heart attack;
- Hypertension;
- Stroke;
- Immune system depression (makes body more susceptible to infections);
- Cancers of the liver, esophagus, nasopharynx, or larynx; and

- Brain damage (dementia, blackouts, seizures, hallucinations, peripheral neuropathy).

Social Issues

- The majority of people convicted of driving under the influence – 75% – are considered heavy drinkers or alcoholics.
- Almost two in every five Americans will be involved in an alcohol-related vehicle accident in their lifetime.
- The risk of a traffic fatality per mile driven is at least eight times higher for a drunk driver than a sober driver.

Other Issues that Impact the Workplace

- Greatly impaired driving ability;
- Reduced coordination and reflex actions;
- Impaired vision and judgement;
- Inability to divide attention;
- Lowered inhibitions; and
- Headaches, nausea, dehydration, unclear thinking, unsettled digestion, and aching muscles.

DRUGS

Marijuana

Marijuana is one of the most misunderstood and underestimated drugs of abuse. It is used for its mildly tranquilizing mood and perception-altering effects. It alters the brain's interpretation of incoming messages but does not depress the person's reactions of the central nervous system. It alters a person's sense of time and reduces the ability to perform tasks requiring concentration, swift reflexes, and coordination. The drug has a significant effect on a user's judgement, caution, and sensory/motor abilities.

Signs and Symptoms of Use

- Reddened eyes;
- Slowed speech;
- Distinctive pungent odor on clothing (aroma of alfalfa combined with incense);
- Lackadaisical "I don't care" attitude;
- Chronic fatigue and lack of motivation;
- Irritating cough; and
- Chronic sore throat.

Health Effects

Over time, long-term inhalation of marijuana smoke may result in the following health hazards:

- Lung irritation;
- Emphysema-like conditions;
- Cancer;
- Heart conditions;
- Respiratory tract and sinus infections caused by the fungus *Aspergillus*, a common contaminant of marijuana;
- Lowered immune system response;
- Aggravation of ulcers; and
- Brain damage.

Other Issues that Impact the Workplace

- Next to alcohol, marijuana is the most frequently found substance in drivers involved in fatal crashes;
- Driving ability is impaired for at least 4-6 hours after one joint;
- Impaired signal detection (ability to detect a brief flash of light);
- Impaired tracking (ability to follow moving objects with the eyes);
- Impaired visual distance measurements;
- THC is stored in body fat and slowly released over time causing a long-term effect on overall performance; and
- Marijuana chemically alters the brain and gross motor functioning of the body, having a direct impact on the complex system of critical thinking skills and reflexes that allow people to drive safely and conscientiously.

Cocaine

Cocaine is used medically as a local anesthetic. It is abused for its powerful physical and mental stimulant properties. The entire central nervous system is energized by cocaine. Heart rate and blood pressure are elevated. Muscles become more tense and the body burns more energy. The brain experiences an exhilaration caused by a large release of neurohormones associated with mood elevation.

Signs and Symptoms of Use

- Fatigue;
- Anxiety and agitation;
- Runny or irritated nose;

- Difficulty concentrating;
- Diluted pupils and visual impairment;
- High blood pressure, heart palpitations, and irregular heart rhythm;
- Insomnia; and
- Profuse sweating and dry mouth.

Health Effects

- Accelerated pulse, blood pressure, and respiration. May cause spasms of blood vessels in the brain and heart, leading to ruptured vessels that lead to heart attack and stroke.
- Regular use may upset the chemical balance of the brain, which may speed up the aging process by causing irreparable damage to critical nerve cells.
- Mental dependency on crack cocaine occurs within days or within several months for snorting coke. Cocaine causes the strongest mental dependency of all controlled substances.
- Cocaine is extremely dangerous when taken with depressant drugs. Death due to overdose is rapid and the fatal effects of an overdose are usually not reversible by medical intervention.

Other Issues that Impact the Workplace

- Impaired driving ability;
- Hallucinations;
- Talkativeness;
- Restless, aggressive behavior;
- Extreme mood swings;
- Increased physical activity;
- Heightened, but momentary, feeling of confidence, strength, and endurance;
- Paranoia which can trigger mental disorders in users prone to mental instability;
- Repeated sniffing/snorting causes irritation of the nostrils and nasal membrane which may cause nosebleeds;
- Compulsive behavior such as teeth grinding or repeated hand washing; and
- Craving for more cocaine.

Amphetamines and Methamphetamines

Amphetamines and methamphetamines are drugs that stimulate the central nervous system and promote a feeling of alertness and an increase in speech and general physical activity. They are abused for the physical sense of energy at lower doses and the mental exhilaration of higher doses.

Signs and Symptoms of Use

- Hyperexcitability, restlessness, anxiety;
- Dilated pupils;
- Profuse sweating;
- Rapid respiration;
- Difficulty focusing eyes; and
- Exaggerated reflexes, body tremors.

Health Effects

- Heartbeat disturbances or heart damage caused by severe constriction of capillary blood vessels;
- Increased blood pressure;
- Convulsions;
- Coma;
- Brain damage resulting in speech disturbances;
- High doses may cause toxic psychosis resembling schizophrenia; and
- Long-term users often have acne resembling measles, trouble with their teeth, gums, nails, and dry, dull hair.

Other Issues that Impact the Workplace

- Impaired driving ability;
- Loss of appetite;
- Headaches/dizziness;
- Confusion;
- Panic;
- Talkativeness;
- Inability to concentrate;
- Short-term insomnia;
- Paranoid thoughts; and
- Hallucinations.

Opioids

Opioids are a class of narcotics that cause a strong euphoric feeling. Opioids include opium, heroin, morphine, codeine, hydrocodone, hydromorphone, oxycodone, and many synthetic drugs used to alleviate pain and depress body functions and reactions. Synthetic opioids, such as fentanyl, methadone, carfentanyl, tramadol, and many others, can be 50 to 10,000 times more potent than morphine.

Signs and Symptoms of Use

- Mood changes;
- Impaired mental function and alertness;
- Impaired vision;
- Warm flushing of the skin;
- Sweating;
- Slurred speech;
- Constricted pupils;
- Slowed reflexes; and
- Impaired coordination.

Health Effects

- IV needle users have a high risk of contracting hepatitis and HIV due to the sharing of needles.
- Narcotics increase pain tolerance. As a result, people could more severely injure themselves and fail to seek medical attention due to a lack of pain sensitivity.
- Narcotic effects are multiplied when used in combination with alcohol and other depressant drugs, causing an increased risk for overdose.
- High doses can result in lowered blood pressure, slow breathing, seizures, convulsions, loss of consciousness, coma, and death.

Other Issues that Impact the Workplace

- Impaired driving ability;
- Drowsiness followed by sleep;
- Decreased physical activity;
- Sleeplessness and drug craving;
- Depression and apathy;
- Constipation; and
- Nausea and vomiting.

Phencyclidine (PCP)

In the past, PCP was used as a veterinary anesthetic and tranquilizer. Today it has no lawful use and is no longer legally manufactured. Phencyclidine is abused primarily for its variety of mood-altering effects. Low doses produce sedation and euphoric mood changes. The mood can rapidly change from sedation to excitation and agitation. Increased doses produce an excited, confused state including any of the following: muscle

rigidity, loss of concentration and memory, visual disturbances, delirium, feelings of isolation, and convulsions.

Signs and Symptoms of Use

- Impaired driving ability;
- Impaired coordination;
- Thick, slurred speech;
- Severe confusion and agitation;
- Muscle rigidity; and
- Profuse sweating.

Health Effects

- The potential for accidents and overdose emergencies is high due to the extreme mental effects combined with the anesthetic effect on the body.
- PCP becomes more potent in combination with other depressant drugs, including alcohol, increasing the likelihood of an overdose.

Other Effects that Impact the Workplace

- Loss of concentration and memory;
- Extreme mood shift;
- Nystagmus (jerky, involuntary eye movements);
- Rapid heartbeat;
- Dizziness;
- Convulsions; and
- Memory loss.

13.2 Appendix B: DOT Drug and Alcohol Testing Resources and Service Providers

1. Town of Milliken Alcohol and Drug Testing Program Contact (DER)

For all questions concerning Town of Milliken's policy or implementation of the Town of Milliken's alcohol and drug testing program, employees should contact the individual named below who is designated as the Town of Milliken DER:

Name: Kathryn "Kathy" Kindsfather
Title: DER
Address: 1101 Broad Street, Milliken, Colorado 80543
Phone: (970) 660-5040
Email: kkindsfather@millikenco.gov

Name: Courtney Diller
Title: DER
Address: 1101 Broad Street, Milliken, Colorado 80543
Phone: (970) 660-5048
Email: cdiller@millikenco.gov

Name: Town Administrator
Title: DER
Address: 1101 Broad Street, Milliken, Colorado 80543
Phone: (970) 587-4331

2. Drug Testing Laboratory

HHS-certified laboratories designated by Town of Milliken to conduct the analysis of all urine or oral-fluid specimens tested under the terms of this policy may vary from terminal to terminal.

3. Medical Review Officer (MRO)

The following physician(s) has been designated by Town of Milliken to perform MRO functions for all alcohol and drug tests conducted under the terms of this policy:

Name: Dr. Neil Dash – Doctors Review Service
Address: 546 Franklin Ave. Massapequa, NY 11758
Phone: 516-799-2700

4. Substance Abuse Professional (SAP)

A current SAP list and services, including information, referral, assessment, and evaluation, are available through Town of Milliken's DER.

13.3 Appendix C: Part 40 Requirements

ALCOHOL TESTING PERSONNEL; SITES, FORMS, AND EQUIPMENT [49 CFR PART 40 SUBPARTS J-K]

Testing Personnel

THE BREATH ALCOHOL TECHNICIAN (BAT)

All breath alcohol testing required under this policy will be carried out by a breath alcohol technician (BAT) trained and proficient in the operation of the evidential breath testing device (EBT) being used by Town of Milliken for alcohol testing. A BAT must be knowledgeable about the alcohol testing procedures in 49 CFR Part 40 and the current DOT guidance, demonstrate proficiency, and receive refresher training at least once every five years.

THE SCREENING TEST TECHNICIAN (STT)

Anyone qualified to act as a BAT may act as a STT, provided that he/she has demonstrated proficiency in the operation of the non-evidential screening device to be used by that individual.

Any other individual may act as an STT as long as he or she is knowledgeable about the alcohol testing procedures in 49 CFR Part 40 and the current DOT guidance, demonstrates proficiency, and receives refresher training at least once every five years.

OTHER PERSONNEL

Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing will be considered qualified as BATs or STTs under this policy; however, in order for a test conducted by such an officer to be accepted under this policy, that officer must have been certified by a state or local government to use the EBT or non-evidential alcohol screening device (ASD) that was used for the test.

A direct supervisor of a driver will not be permitted to serve as the collection site person for that employee's alcohol test.

Alcohol Testing Devices

EVIDENTIAL BREATH TESTING DEVICE (EBT)

EBTs will be on the Office of Drug and Alcohol Policy and Compliance's (ODAPC's) webpage for "Approved Evidential Breath Measurement Devices." For confirmatory breath tests, Town of Milliken will use an EBT that is capable of providing a printed result of each breath test in triplicate (or three consecutive identical copies). This device will be capable of assigning and printing a unique number to each completed test, as

well printing the manufacturer's name for the device, its serial number, and the time of the test. The EBT will also be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level, and be capable of testing an air blank prior to each collection of breath, and performing an external calibration check.

NON-EVIDENTIAL ALCOHOL SCREENING DEVICES (ASDs)

In the event Town of Milliken elects to use a non-evidential screening device to perform any alcohol screening test required by the DOT's alcohol testing regulations, it will only use a non-evidential ASD listed on ODAPC's webpage for "Approved Screening Devices to Measure Alcohol in Bodily Fluids." Non-evidential screening devices will not be used for confirmation alcohol tests, which must be conducted using EBTs as provided in Part 40, Subpart M.

Quality Assurance Plan

In order to be used for any alcohol testing under this policy, the EBT and the ASD must have a quality assurance plan (QAP) developed by the manufacturer and approved by NHTSA. Town of Milliken or its designated agent will ensure compliance with the QAP for each EBT and ASD used for alcohol testing under this policy.

Alcohol Testing Site

Town of Milliken will use an alcohol testing site that affords visual and aural privacy to the individual being tested sufficient to prevent unauthorized persons from seeing or hearing test results. The alcohol testing site will be secure, and no unauthorized persons will be permitted access to it at any time when testing is being conducted, or when the EBT remains unsecured. Alcohol testing will take place at locations designated by Town of Milliken.

Part 40 allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable. An alcohol testing site can be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements.

Breath Alcohol Testing Form

Town of Milliken will use a Breath Alcohol Testing Form prescribed by the DOT for both EBTs and non-evidential ASDs.

ALCOHOL TESTING PROCEDURES [49 CFR PART 40 SUBPARTS L-M]

Screening Testing

The BAT or STT will take the following steps for alcohol screening tests, regardless of the type of testing device he or she is using. If the employee is also going to take a DOT

drug test, the BAT or STT, to the greatest extent practicable, will ensure that the alcohol test is completed before the drug collection process begins. If the employee needs medical attention, for example, following a crash, medical treatment will not be delayed in order to perform the post-accident alcohol test.

After providing photo identification to the BAT or STT, the BAT or STT will explain the testing process to the employee and go over the instructions appearing on the Breath Alcohol Testing Form. The BAT/STT will complete Step 1 of the ATF, and then direct the employee to complete Step 2 of the form. Any employee who refuses to sign the acknowledgment of testing in Step 2 of the form will be considered to have refused to test. The employee will follow the BAT's or STT's instructions and provide a breath or saliva sample for the initial test.

If the result of the test is <0.02 alcohol concentration, the test is considered negative and the process is complete. The BAT or STT and the employee will complete and sign the Breath Alcohol Testing Form. If the result of the test is 0.02 or greater alcohol concentration, the employee will be instructed by the BAT or STT to take a confirmation test.

Confirmation Testing

If the initial alcohol test result is 0.02 or greater, a confirmation test, using an EBT capable of printing the test results, will be conducted. After a waiting period of at least 15 minutes, during which the employee is observed and requested not to take anything by mouth, the employee will be asked to provide a breath sample. The purpose of the waiting period is to ensure that no residual mouth alcohol is present for the confirmation test.

If the result of the confirmation test is <0.02 alcohol concentration, nothing further is required of the employee. The BAT signs Step 3 of the ATF.

If the confirmation test result is >0.02 , the employee and the BAT will complete and sign Step 4 of ATF, and a copy of the form, including the test results, will be provided to the employee. The BAT will immediately notify the Town of Milliken representative, and the employee will remain at the testing facility until provided with transportation home.

Town of Milliken will notify the employee at home the next business day of the next steps, which may include disciplinary action, up to and including termination of employment, or termination of agreement for independent contractors.

PROBLEMS IN ALCOHOL TESTING [49 CFR PART 40 SUBPART N]

Inability to Provide a Sample

SALIVA SAMPLE

In the event an employee is unable to provide or alleges he/she is unable to provide a breath or saliva sample, the employee will make two attempts to complete the testing process. If the employee cannot provide a saliva sample for the screening test, the employee will submit to a breath alcohol test.

BREATH SAMPLE

If the employee cannot provide an adequate breath sample after three attempts, the BAT or STT will discontinue the testing process. (NOTE: If qualified to use a saliva ASD and it is in the screening test stage, the BAT or STT may change to a saliva ASD only to complete the screening test.) The BAT or STT will notify the Town of Milliken representative if an adequate sample is not provided, and the employee shall, as soon as practical, be evaluated by a physician.

The physician will determine if there is a medical condition or diagnosis that prevents the employee from providing an adequate breath sample. If the physician is unable to document a medical condition or diagnosis responsible for the employee's failure to provide an adequate sample, it is considered a refusal to test.

Cancelled Alcohol Test Results

According to Part 40, Subpart N, an alcohol test is cancelled under certain circumstances. In the event the alcohol test is cancelled, the DER will be notified.

ALCOHOL TESTING FATAL FLAWS

Certain circumstances, fatal flaws, always result in a cancelled test. For a **screening test** conducted on a saliva ASD or a breath tube ASD, fatal flaws include:

- The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer and Part 40;
- The saliva ASD does not activate (see §40.245(a)(7));
- The device is used for a test after the expiration date printed on the device or on its package; and
- The breath tube ASD is tested with an analyzer which has not been pre-calibrated for that device's specific lot.

For a **screening or confirmation test** conducted on an EBT, it is a fatal flaw if the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

Confirmation test fatal flaws include:

- The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period;
- The BAT does not conduct an air blank before the confirmation test;
- There is not a 0.00 result on the air blank conducted before the confirmation test;
- The EBT does not print the result; and
- The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled.

ALCOHOL TESTING CORRECTABLE FLAWS

The BAT or STT or Town of Milliken must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are “correctable flaws.” These problems include when:

- The BAT or STT does not sign the ATF;
- The BAT or STT fails to note on the “Remarks” line of the ATF that the employee has not signed the ATF after the result is obtained; or
- The BAT or STT uses a non-DOT form for the test.

EFFECT OF A CANCELLED TEST

A cancelled alcohol test is neither positive nor negative. Town of Milliken:

- Will not attach to a cancelled test the consequences of a test result that is 0.02 or greater (e.g., removal from a safety-sensitive position).
- Cannot use a cancelled test in a situation where an employee needs a test result that is below 0.02 (e.g., in the case of a return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions). A retest is required.
- Will not direct a recollection for an employee because a test has been cancelled except in the situations cited above.
- Cannot use a cancelled test toward a minimum random testing rate.

Refusal to Test

According to Part 40, Subpart N for purposes of alcohol testing, the following are considered refusals to test:

- The employee refuses to sign Step 2 of the Breath Alcohol Testing Form;
- The employee refuses to attempt to provide a sample;
- The employee fails to cooperate with the testing process;
- The employee is unable or unwilling to provide an adequate breath sample and the examining physician does not find a medical condition or diagnosis that prevents the employee from providing the sample;
- The employee fails to remain readily available for testing following an accident as defined in this policy;
- The employee fails to report for testing; and/or
- The employee fails to remain at the testing site until the process is complete (with exception of pre-employment, which requires that the testing process commenced).

Any employee who is deemed to have refused to test will be immediately removed from performing safety-sensitive functions as defined in FMCSR Part 382. Town of Milliken will impose disciplinary action as permitted by state law.

CONTROLLED SUBSTANCE TESTING METHODOLOGY [PART 40 SUBPARTS F and H]

Controlled Substances

In accordance with FMCSR §40.82, a specimen analysis will be conducted to detect the presence of the following substances:

- Marijuana metabolites
- Cocaine metabolites
- Opioids
- Amphetamines
- Phencyclidine (PCP)

The nationally-certified testing lab will also add methylenedioxymphetamine as an initial test analyte. Detection levels requiring a determination of a positive result shall be in accordance with the guidelines adopted by the FMCSA in accordance with the requirements established in §§40.85 and 40.91.

Laboratory Analysis

All specimens tested for drugs under this policy will be analyzed at a laboratory certified by the Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), including the laboratory selected by Town of Milliken for testing conducted under this policy.

Initial and Confirmation Screening

All specimens will be tested for the drug classes listed in this policy in the concentrations specified in §40.85 and §40.91. On an initial drug test, the lab must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, the lab must conduct a confirmation test. On a confirmation drug test, the lab must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

Validity Testing on Urine Specimens

A laboratory must conduct validity testing. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

Validity testing of a urine specimen consists of:

- Determining the creatinine concentration;
- Determining the pH;
- Performing one or more validity tests for oxidizing adulterants;
- Performing additional validity tests when the following conditions are observed:
 - Abnormal physical characteristics;
 - Reactions or responses characteristic of an adulterant obtained during initial or confirmatory drug tests; and
 - Possible unidentified interfering substance or adulterant.

A primary specimen is considered dilute when:

- The creatinine concentration is greater than or equal to 2 mg/dL but less than 20 mg/dL; and
- The specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot.
- If the specimen has a creatinine concentration of 2 mg/dl to 5 mg/dL, the MRO will direct employers to retest the driver as soon as possible. The test must be under direct observation.

Failure to go when instructed is a refusal to test.

Validity Testing on Oral-Fluid Specimens

Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human oral fluid. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the oral fluid, if the oral fluid was altered.

If a specimen exhibits abnormal characteristics (e.g., unusual odor or color), causes reactions or responses characteristic of an adulterant during initial or confirmatory drug tests, or contains an unidentified substance that interferes with the confirmatory analysis, then the lab may conduct validity testing.

The lab:

- May test for a biomarker such as albumin or immunoglobulin G (IgG) or a test for a specific adulterant.
- Must follow the applicable HHS requirements for any additional validity testing.

If the lab determines that the specimen is invalid and HHS guidelines direct the lab to contact the Town of Milliken MRO, the MRO and the lab and together decide if testing the primary specimen by another HHS-certified lab would be useful in being able to report a positive or adulterated test result.

Laboratory Reporting of Results

When transmitting laboratory results to the MRO, the lab together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage. If the results are provided by fax or other electronic means, the electronic communication must be accessible only to authorized individuals.

All test results must be transmitted to the MRO in a timely manner, preferably the same day that the review by the certifying scientist is completed.

The lab must report the results of each primary specimen tested as one or more of the following:

Category 1: Negative:

- Negative, or

- For urine only, negative-dilute, with numerical values for creatinine and specific gravity

Category 2: Non-negative:

- Positive
- For urine only, positive-dilute
- Adulterated
- For urine only, substituted
- For urine only, invalid result with pH results
- For oral fluid only, invalid with numeric values

Category 3: Rejected for testing, with remarks:

- All test results must be reported directly to the MRO, not through the DER or a service agent.
 - For negative results, the lab must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF which has been signed by the certifying scientist or may provide the lab results report electronically (i.e., computer data file).
 - For non-negative and rejected-for-testing results, the lab must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF that has been signed by the certifying scientist.

Quantitative levels shall only be released to the employer if the employer is involved in an administrative or legal proceeding brought by the employee in challenging a test result.

The laboratory will provide an aggregate semi-annual statistical summary to Town of Milliken, or its representative, summarizing the testing activity for the previous 6 months.

Specimen Retention and Storage

Positive adulterated, substituted, or invalid specimens will be retained in long-term frozen storage in accordance with HHS requirements for a minimum of one year. Split specimens of positive, adulterated, substituted, or invalid results will also be retained in frozen storage a minimum of one year, or until the MRO provides a written request for the split to be transferred to another laboratory for analysis (whichever occurs first).

Split Specimen Analysis

When a laboratory receives a split specimen (Bottle B) from the laboratory that conducted the confirmation analysis of Bottle A, the laboratory will conduct the analysis of Bottle B using the prescribed procedures in Subpart H to Part 40. When testing to reconfirm the presence of:

- A drug or drug metabolite, the laboratory must conduct this test without regard to the cutoff concentrations of §40.85 or §40.91, as applicable.
- An adulterant, the laboratory will use the confirmatory test for the adulterant and use criteria in §40.89 or §40.93, as applicable and confirmatory cutoff levels.
- Substituted test result, the laboratory will use the confirmatory tests for creatinine and specific gravity, and using the confirmatory criteria set forth in §40.88.

The results of the split specimen analysis are reported to the MRO as “Reconfirmed” and/or the “Failed to Reconfirm,” as appropriate, and by providing clarifying remarks using current HHS Mandatory Guidelines requirements. The split specimen will be retained in long-term frozen storage for a minimum of one year by the laboratory that conducted the split specimen analysis.

CONTROLLED SUBSTANCE TESTING PROCEDURES [PART 40 SUBPARTS D-E]

Any person requested to undergo a drug test will be required to provide a urine or oral-fluid sample at a designated collection site. In order to ensure integrity of the specimen collection procedure, a standard drug testing custody and control form (CCF) will be used. This form will be completed by the employee and the specimen collector and will be forwarded along with the sample to a designated laboratory. The MRO, employee, and collector also receive a copy of the CCF.

Collection Sites

URINE SPECIMEN COLLECTION SITES

Town of Milliken will designate specimen collection sites/facilities. The facilities will have the personnel, materials, equipment, and supervision necessary to provide collections in accordance with Part 40 requirements.

A collection site may be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements. Procedures shall provide for the collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during the drug testing. A facility normally used for other purposes, such as a public restroom or

hospital examining room, may be secured by visual inspection to ensure other persons are not present and undetected access is not possible.

ORAL-FLUID SPECIMEN COLLECTION SITES

Town of Milliken will designate specimen collection sites/facilities. The facilities will have the personnel, materials, equipment, and supervision necessary to provide collections in accordance with Part 40 requirements.

A collection site may be a permanent or temporary facility located either at the work site or at a remote site; a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements. If a collection site is not accessible and there is an immediate requirement to collect an oral-fluid specimen (e.g., an accident investigation), another site may be used for the collection, if the collection is performed by a collector who has been trained to collect oral-fluid specimens in accordance with Part 40 and the manufacturer's procedures for the collection device.

Collection Site Personnel

The collection site personnel are responsible for the integrity of the specimen collection and transfer process, and for ensuring the dignity and privacy of the donor. All collection site staff will be trained to prepare the collection site, collect specimens, examine specimens for tampering or sample adulteration, observe collections, split the specimens, and properly label and preserve the specimen CCFs.

A collector must be knowledgeable about the urine or oral-fluid testing procedures, as applicable, in 49 CFR Part 40 and the current DOT guidance, demonstrate proficiency, and receive refresher training at least once every 5 years.

A direct supervisor of an employee will not be permitted to serve as the collection site person for that employee's drug test.

An employee who is a qualified collector is not permitted to be his or her own collector; another qualified collector must perform the collection.

To avoid a potential conflict of interest, a collector must not be related to the employee being tested (e.g., spouse, ex-spouse, relative) or a close personal friend.

Chain of Custody and Collection Control

To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has provided a collection container. After the specimen is collected, it shall be properly sealed and labeled. The chain of custody block on the drug testing CCF shall be executed by

authorized personnel upon receipt of the specimen. This form shall be used for maintaining control and accountability of each specimen from the point of collection to shipment/transportation of the specimen.

Individual Privacy

Collection procedures shall allow urine and oral-fluid specimens to be provided by the individual in private.

A urine collection under direct observation, by a same gender collection site person, is required in the following circumstances:

- Recollections directed by the MRO under direct observation;
- Return-to-duty or follow-up tests;
- Observations made by collection site personnel clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.); and
- A urine specimen that falls outside the normal temperature (32°-38°C/90°-100°F), and the employee declines to provide a measurement of oral body temperature or oral body temperature varies by more than 1°C/1.8°F from the temperature of the specimen.

If the sample is being collected from an employee in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen. Specimens will not be collected from deceased, comatose, or otherwise unresponsive employees.

Specimen Integrity And Identity

Collectors and operators of collection sites must take the steps to prevent unauthorized access that could compromise the integrity of collections.

Town of Milliken, the employee, and the collection site shall take appropriate precautions to preserve the integrity of the specimen by ensuring that it is not adulterated or diluted during the collection procedure, and that the specimen belongs to the person from whom it was collected.

Collection site personnel will be responsible for maintaining the integrity of the specimen collection and transfer process, but employees are expected to cooperate with collection site personnel, and to exercise good faith in conjunction with the specimen collection procedures.

Drug Testing Procedures

PRELIMINARY STEPS IN URINE AND ORAL-FLUID SPECIMEN COLLECTIONS

The collection site will begin the process without undue delay. When an alcohol test is required during the same visit, it will be completed before the drug testing process begins to the greatest extent practicable. The following are the preliminary steps for both drug testing methods:

- The employee must provide positive identification.
- The employee may ask the collector to provide identification.
- The collector explains the basic collection procedure to the employee, and notify the employee that instructions for completing the CCF can be found on the HHS and DOT websites.
- The employee is instructed to remove outer clothing (e.g., coveralls, jacket, hat) that could be used to conceal items or substances used to tamper with a specimen.
- The employee is instructed to leave these garments and any briefcase, purse, or other personal belongings at a mutually agreeable location. Employees may keep his or her wallet.
- The employee is directed to empty his or her pockets and display items to ensure that no items are present to adulterate the specimen.

The collector will determine if materials were brought to the collection site with the intent to alter a specimen. If that is the conclusion, the test will be a directly observed urine collection or oral-fluid specimen.

Employees are instructed not to list current medication on the CCF.

URINE SPECIMEN COLLECTIONS

The collector will complete Step 1 on the CCF. Then, the employee will be instructed to wash and dry his/her hands. At this point, he/she will not have access to water or other materials that could be used to adulterate or dilute a specimen. The driver may not wash his/her hands again until the specimen has been given to the collector.

The collector must select, or allow the employee to select, an individually wrapped or sealed collection container. Either the employee or the collector (with both parties present) must unwrap or break the seal of the collection container.

The employee will be directed by the collector to go into a room used for urination and provide a specimen of at least 45 mL, not flush the toilet, and return to the collector with the specimen. Except in the case of a monitored collection, no one is allowed in

the room with the driver. Also, the collector may set a reasonable time limit for providing the specimen.

All urine specimens will be collected in a clean, single-use specimen bottle(s), securely wrapped until filled with the specimen. The specimen bottle(s) will be labeled and sealed with tamper-evident tape/label by the collector in the employee's presence. The employee will initial the bottle(s) seals.

ORAL-FLUID COLLECTIONS: INSPECTING THE ORAL CAVITY

The collector will request that the employee open his or her mouth, and the collector inspects the oral cavity to ensure that it is free of any items that could impede or interfere with the collection of an oral-fluid specimen (e.g., candy, gum, food, or tobacco) or could be used to adulterate, substitute, or alter the specimen.

If the collector finds indication(s) something likely to interfere with testing, the collector will ask the employee to lift their tongue and/or separate their cheek from their gum to permit full inspection.

If this occurs, the employee may cleanse their hands, but must not decline the collector's request for further inspection. If the employee claims that they have a medical condition that prevents opening their mouth for inspection, the collector follows the regulatory procedures when there is an insufficient specimen.

If the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to adulterate, substitute, or alter the specimen, the collector must:

- Terminate the collection;
- Note the circumstances in the "Remarks" section of the CCF; and
- Report the circumstances to the Town of Milliken's DER, so that Town of Milliken can decide whether to deem the situation a refusal in accordance with §40.191(a).

If an item is present that might impede or interfere with the collection of an oral-fluid specimen, the collector must request the employee remove the item.

The collector must give the employee water, up to 8 ounces, to rinse their mouth if the employee:

- Removes any item that could impede or interfere with the collection of an oral-fluid specimen;

- Has abnormally colored saliva; or
- Claims to have “dry mouth.”

The employee may drink the water. The collector must then wait 10 minutes before beginning the specimen collection.

If the employee refuses to remove the item or rinse, the collector must terminate the collection, note the circumstances in the “Remarks” section of the CCF, and report the information to the DER to test as failure to cooperate, so that the employer can decide whether to deem the situation a refusal.

ORAL-FLUID COLLECTIONS: 10-MINUTE WAIT PERIOD

If there is nothing of concern in the oral cavity and no “dry mouth” condition, the collector starts a 10-minute wait period and proceeds with the steps below before beginning the specimen collection. During the 10-minute wait period, the collector:

- Reviews with the employee the procedures required for a successful oral-fluid specimen collection as stated in the manufacturer’s instructions for the specimen collection device.
- Completes all items under Step 1 of the CCF, and for clarification:
 - In Step 1.D of the CCF, puts a check mark for the “Specify DOT Agency” under whose authority the test will take place.
 - In Step 1.G of the CCF for the “Collection Site Address,” provides the address where the collection took place.

The collector then provides, or the employee may select, a specimen collection device that is clean, unused, and wrapped/sealed in original packaging. The collector must check the expiration date on the device or the package containing the device and show it to the employee. The collector must not use the device after its expiration date. The collector must open the specimen collection device in view of the employee.

The collector will complete Step 2 of the CCF:

- Check “Oral Fluid”;
- For “Oral Fluid: Split Type”, check “Subdivided”; and
- Check “Each Device Within Expiration Date?” after ensuring the device is within its expiration date.

The collector will enter the Split Specimen Device Expiration Date in Step 4 of the CCF. Since the collector will use one oral-fluid device that will collect a single specimen,

which is then subdivided in the presence of the donor, only one entry in Step 4 is to be made for the device expiration date.

The collector must instruct the employee to use hand sanitizer or wash and dry their hands.

To the greatest extent practicable, the collector must keep the employee's unwrapped collection device within view of both the collector and the employee, between the time the employee has provided a specimen and the specimen is sealed.

ORAL-FLUID COLLECTIONS: PROVIDING A SAMPLE

The following steps are required during an oral-fluid collection for DOT drug testing:

- The collector must be present and maintain visual contact with the employee during the procedures.
- The collector must note any unusual behavior or appearance of the employee on the CCF. If the collector detects any conduct that clearly indicates an attempt to tamper with a specimen (e.g., an attempt to bring into the collection site an adulterant or oral-fluid substitute), the collector must terminate the collection and report the information to the DER so that the employer can decide whether to deem the situation a refusal.
- The employee and collector must complete the specimen collection in accordance with the manufacturer's instructions for the collection device.
 - Under the observation of the collector, the employee is responsible for positioning the specimen collection device for collection.
 - The collector must ensure:
 - The collection is performed correctly (i.e., using the oral-fluid device in the manner described by its manufacturer),
 - The collection device is working properly, and
 - A sufficient specimen volume is collected.
- If the employee states that they are unable to provide an oral-fluid specimen or provides an insufficient specimen during the collection process, the collector must continue to make one attempt to collect, after an insufficient specimen, the collector follows the procedure in §40.193.
- The collector must:
 - Inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering.
 - Conduct a new collection if it is apparent from this inspection that the employee has tampered with the specimen and document any unusual characteristics referenced above in the Remarks section of the CCF. The new oral-fluid sample requires a new CCF with a note from the collector

that this is another collection for the same testing event. Make the same notation on the CCF of the suspect specimen.

SPLIT SPECIMEN PROCEDURES FOR ORAL-FLUID TESTING

For oral-fluid specimens, the collector follows the manufacturer's instructions to package the split specimen collections:

- A volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as "Bottle A," and a volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as "Bottle B," or an otherwise sufficient amount of oral fluid is collected to permit an HHS-certified laboratory to analyze the specimen(s).
- In the presence of the employee, the collector places a tamper-evident seal from the CCF over the cap of each specimen container, taking care not to obstruct the expiration date on the collection containers. The collector must record the date of the collection on the tamper-evident seals, after they are affixed to the specimen containers.
- The collector instructs the employee to initial the tamper-evident seals on each specimen container. If the employee declines to do so, the collector must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.

COMPLETING THE DRUG TESTING PROCESS: URINE OR ORAL FLUID

The collector then directs the employee to read and sign the certification statement on Copy 2 of the CCF and provide all information required in Step 5. If the employee declines to sign the CCF or to provide any of the required information, the collector must note this in the "Remarks" line (Step 2) of the CCF and complete the collection. If the employee declines to fill out any information, the collector must, as a minimum, print the employee's name in the appropriate place. In the presence of the employee, the collector will:

- Complete the chain of custody on the CCF (Step 4) by printing their name, recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory.
- Remove Copy 5 of the CCF and give it to the employee.
- Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag.
- Secure both pouches of the plastic bag.
- At that point, the collector will advise the driver that they may leave the collection site.

Then the collector must finish preparing the specimens for shipment to the testing lab. The specimens must be shipped to the lab as quickly as possible. They must be shipped within 24 hours or during the next business day.

Insufficient Specimen: Urine or Oral Fluid

If an employee does not provide a sufficient amount of specimen to permit a drug test (i.e., 45 mL of urine in a single void, or 2mL oral fluid in a single sampling, as applicable), the collector must provide another opportunity to the employee to do so.

In accordance with the Town of Milliken's instructions, this can be done using the same specimen type as the original collection or this can be done by a collector qualified to use an alternate specimen collection for this purpose.

Town of Milliken's has a standing order with the collection site to perform another test using the same testing method.

USE OF AN ALTERNATE SPECIMEN COLLECTION

If the collector changes to an alternate specimen collection at this point (i.e., from urine to oral fluid; or from oral fluid to urine), the next collection begins under §40.61(e) for urine or §40.72 for oral-fluid collection.

If the collector proceeds with an alternate specimen collection, the collector:

- Discards the insufficient specimen and proceeds with the next specimen collection.
- Discards the CCF for the insufficient specimen and begins a new CCF for the next specimen collection with a notation in the remarks section of the new CCF.

CONTINUING WITH A URINE SPECIMEN COLLECTION

When continuing with a urine specimen collection, the collector:

- Discards the insufficient specimen, except where the insufficient specimen was out of temperature range or showed evidence of adulteration or tampering.
- Urges the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to 3 hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink.
- Documents on the "Remarks" line of the CCF (Step 2) and informs the employee of the time at which the three-hour period begins and ends.

If the employee refuses to make the attempt to provide a new urine specimen or leaves the collection site before the collection process is complete, the collector must discontinue the collection, note that fact on the “Remarks” line of the CCF (Step 2), and immediately notify the Town of Milliken’s DER of the conduct; Town of Milliken decides whether the situation is deemed to be a refusal.

If the employee has not provided a sufficient specimen within 3 hours of the first unsuccessful attempt to provide the specimen, the collector must:

- Discontinue the collection, note the fact on the “Remarks” line of the CCF (Step 2), and immediately notify the Town of Milliken’s DER.
- Discard any specimen the employee previously provided, including any specimen that is “out of temperature range” or shows signs of tampering.
- Note in the remarks section of the CCF (that will be distributed to the MRO and DER), the fact that the employee provided an “out of temperature range specimen” or “specimen that shows signs of tampering” and that it was discarded because the employee did not provide a second sufficient specimen.

CONTINUING WITH AN ORAL-FLUID SPECIMEN COLLECTION

The collector must do the following procedures when continuing with an oral-fluid specimen collection. If the employee:

- Demonstrates an inability to provide a specimen after 15 minutes of using the collection device, states that he or she could provide a specimen after drinking some fluids, urge the employee to drink (up to 8 ounces) and wait an additional 10 minutes before beginning the next specimen collection (a period of up to one hour must be provided, or until the employee has provided a sufficient oral-fluid specimen, whichever occurs first).
- Simply needs more time before attempting to provide an oral-fluid specimen, the employee is not required to drink any fluids during the one-hour wait time. It is not a refusal to test if the employee declines to drink.

The employee must remain at the collection site, in a monitored area designated by the collector, during the wait period.

If the employee has not provided a sufficient specimen within one hour of the first unsuccessful attempt to provide the specimen, the collector must:

- Discontinue the collection, note the fact on the “Remarks” line of the CCF (Step 2), and immediately notify the Town of Milliken DER; and

- Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. The collector must send or fax these copies to the MRO and DER within 24 hours or the next business day.

INABILITY TO PROVIDE ADEQUATE SPECIMEN

If the collector informs the Town of Milliken DER that the employee has not provided a sufficient amount of specimen, the Town of Milliken's DER must, after consulting with the Town of Milliken's MRO, direct the employee to obtain, within 5 days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a urine or oral fluid sufficient specimen, but not both.

The evaluation and MRO determination only applies to the oral-fluid or the urine insufficient specimen that was the final methodology at the collection site.

The MRO may perform this evaluation if the MRO has appropriate expertise.

If another physician will perform the evaluation, the MRO must provide the other physician with the following information and instructions relating to DOT drug testing, insufficient specimens, and consequences under DOT agency regulations. The referral physician must agree to follow the DOT requirements.

The referral physician conducting this evaluation must recommend that the Town of Milliken MRO make one of two determinations:

- A medical condition could have kept the employee from providing a sufficient amount of specimen. The test is cancelled.
- There is not an adequate basis for determining that a medical condition could have kept the employee from providing a sufficient amount of specimen. The MRO reports the result as a "Refusal to Test."

A medical condition includes an ascertainable physiological condition or a medically documented pre-existing psychological disorder but does not include unsupported assertions of "situational anxiety" or dehydration.

When Town of Milliken receives a report from the MRO indicating that a test is cancelled must take no further action with respect to the employee. If the test reason was "random," the employee remains in the random testing pool.

Failure to Cooperate

If the employee refuses to cooperate during the collection process (e.g., refusal to provide a complete specimen, complete paperwork, and/or initial specimen), the collection site person will inform the Town of Milliken representative and document the employee's conduct on the drug testing CCF. Employees are expected to exercise good faith and cooperate during the collection process, and failure to do so may subject the employee to discipline, up to and including termination, independent and regardless of the results of any subsequent drug test.

CONTROLLED SUBSTANCE TEST RESULTS [PART 40 SUBPART G]**Medical Review Officer (MRO)**

All test results will be reported by the laboratory to an MRO. The MRO will be a licensed physician with knowledge of substance abuse disorders who has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information. The MRO will review and consider possible alternative medical explanations for the positive test result and review the CCF to ensure that it is complete and sufficient on its face.

The MRO for Town of Milliken is identified in Appendix B: DOT Drug and Alcohol Testing Resources and Service Providers.

MRO Duties

The MRO will perform the following functions for Town of Milliken:

- Review the drug testing results before they are reported to the Town of Milliken;
- Review and interpret each confirmed non-negative test result (positive, adulterated, substituted, or invalid) to determine if there is an alternate medical explanation for the confirmed test result by:
 - Conducting a medical interview with the individual tested;
 - Reviewing the individual's medical history and any relevant biomedical factors;
 - Reviewing all medical records made available by the individual tested to determine if a confirmed non-negative test resulted from legally prescribed medication; and
 - Verifying that the laboratory report and assessment are correct.

Verification Process

Prior to making a final decision to verify a non-negative test, such as positive, adulterated, substituted, or invalid drug test result, the MRO will give the individual an

opportunity to discuss the test result. The MRO will contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result.

MRO OR STAFF'S ROLE IN VERIFICATION PROCESS

A staff person under the MRO's supervision, rather than the MRO, may make the initial contact, which is limited to scheduling the discussion between the MRO and the employee and explaining the consequences to the employee if he/she declines. The MRO is required to speak personally with the employee, either face-to-face or on the phone.

At a minimum, the MRO or his/her staff will make three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF. If the employee cannot be reached directly after making these efforts, the MRO or his/her staff will take the following steps:

- Document the efforts made to contact the employee, including dates and times. If both phone numbers are incorrect (e.g., disconnected, wrong number), the MRO does not have to wait the full 24-hour period to move on to the next step; and
- Contact the DER. The DER is instructed to contact the employee and tell him/her to contact the MRO. When the MRO contacts the DER, he/she will not inform the DER that the employee has a confirmed positive, adulterated, substituted, or invalid test result.

The MRO will keep a record of the attempts to contact or actual contacts made with the DER, including the dates and times.

DER'S ROLE IN VERIFICATION PROCESS

When the DER is contacted by the MRO because he/she is unable to reach the driver, the DER must attempt to contact the employee immediately. The DER shall use procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact him/her. This includes not divulging this to anyone else working for Town of Milliken.

The DER, at a minimum, must make three attempts, spaced reasonably over a 24-hour period, to reach the individual at the day and evening telephone numbers listed on the CCF. The DER must document the dates and times of these efforts.

If DER successfully contacts the individual (i.e., actually talks with him/her), the DER will:

- Document the date and time of the contact and inform the MRO; and
- Inform the individual:
 - That he/she should contact the MRO immediately; and

- The consequences of failing to contact the MRO within the next 72 hours.

If the Town of Milliken DER has made all reasonable efforts to contact the employee, but failed to do so, he/she:

- Must leave a message for the employee by any practicable means (e.g., voicemail, email, letter) to contact the MRO and inform the MRO of the date and time of this attempted contact.
- May place the employee on temporary medically unqualified status or medical leave.

INABILITY TO COMMUNICATE WITH EMPLOYEE

The MRO may verify a test as positive or a refusal to test (substituted or adulterated) or verify an invalid test result as cancelled (with instructions to recollect immediately under direct observation) without having communicated directly with an individual about the results in three circumstances:

1. If the individual expressly declines the opportunity to discuss the test;
2. If the designated Town of Milliken representative has successfully made and documented a contact with the individual and instructed him/her to contact the MRO, and more than 72 hours have passed since the individual was successfully contacted; or
3. If neither the MRO nor employer has successfully contacted the employee after 10 days of the date on which the MRO receives the confirmed test result from the laboratory.

If a test is verified as positive or refusal to test, or cancelled as the result of an invalid result, because of an individual's failure to contact the MRO, the individual will have the opportunity to provide the MRO with evidence within 60 days documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from making timely contact with the MRO. The MRO, on the basis of such information, may reopen the verification and allow the individual to present information concerning a legitimate explanation for the confirmed test. If the MRO concludes that there is a legitimate explanation, the MRO will declare the test to be negative.

If further medical evaluation is needed for the verification process, the employee must comply with the MRO's request for this evaluation and that failure to do so is equivalent of expressly declining to discuss the test result.

MRO Determinations

FATAL FLAWS

When the Town of Milliken's lab discovers a "fatal flaw" during its processing of incoming specimens, the MRO will receive a report that the specimen was "Rejected for Testing" (with the reason stated). The MRO must always cancel such a test. Fatal flaws for drug testing are listed in §40.199.

CORRECTABLE FLAWS

When the Town of Milliken's lab discovers a "correctable flaw" during its processing of incoming specimens, it will attempt to correct it. If the lab is unsuccessful, the MRO will receive a report that the specimen was "Rejected for Testing" (with the reason stated).

The MRO must cancel the test unless the flaw is corrected. Correctable flaws are listed in §40.203.

CANCELLED TESTS

A cancelled drug test is neither positive nor negative. Town of Milliken:

- Will not attach the consequences of a positive test or other violation of a DOT drug testing regulation (e.g., removal from a safety-sensitive position) to cancelled test.
- Cannot use a cancelled test for the purposes of a negative test to authorize the employee to perform safety-sensitive functions (i.e., in the case of a pre-employment, return-to-duty, or follow-up test).
- Cannot use cancelled test a valid basis for an employer to conduct a non-DOT test (i.e., a test under Town of Milliken authority).
- Cannot direct a recollection because a test has been cancelled, except in the situations or other provisions under 49 CFR Part 40 that require another test to be conducted.

POSITIVE, ADULTERATED, OR SUBSTITUTED RESULTS

If the MRO determines that there is a legitimate medical explanation for the confirmed positive, adulterated, or substituted test result other than the unauthorized use of a prohibited drug, the MRO will report the test as negative.

If the MRO determines that there is no legitimate medical explanation for the confirmed positive, adulterated, or substituted test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to Town of Milliken for further proceedings in accordance with this policy, report the test as positive or a refusal to test, and provide the name of drug(s) detected.

INVALID RESULTS

When the laboratory reports that the test result is an invalid result, the MRO must speak with the employee to determine if there is acceptable reason for the result.

If the employee does not give a reasonable explanation, the MRO reports to Town of Milliken's DER that the test is cancelled, the reason for cancellation, and that a second collection must take place immediately either an oral-fluid specimen or a urine specimen under direct observation.

- Town of Milliken must ensure that the employee has the minimum possible advance notice that he or she must go to the collection site.
- In the event of a recollection due to an invalid test result, Town of Milliken will use the same testing method as the original specimen.

If the employee gives an explanation that is acceptable, the MRO will report the test as cancelled to Town of Milliken's DER and indicate that no further action is required unless a negative test result is required (i.e., pre-employment, return-to-duty, or follow-up tests).

If a negative test result is required and the medical explanation concerns a situation in which the employee has a permanent or long-term medical condition that precludes him or her from providing a valid specimen, the MRO must follow the procedures outlined at §40.160 for determining if there is clinical evidence that the individual is an illicit drug user.

If the medical evaluation reveals:

- No clinical evidence of drug use, the MRO must report this to Town of Milliken as a negative test result with written notations regarding the medical examination.
- Clinical evidence of drug use, the MRO must report the result to Town of Milliken as a cancelled test with written notations regarding the results of the medical examination. Because this is a cancelled test, it does not serve the purpose of an actual negative test result (*i.e., Town of Milliken is not authorized to allow the employee to begin or resume performing safety-sensitive functions because a negative test result is needed for that purpose*).

If the employee admits to the MRO that he or she tampered with the specimen, the result is reported as a refusal to be tested to Town of Milliken's DER.

When a urine test result is invalid because the pH is greater than or equal to 9.0 but less than or equal to 9.5 and the employee has no other medical explanation for the pH, the MRO will consider whether there is evidence of elapsed time and increased temperature that could account for the pH value. If the MRO determines that time and temperature of a urine specimen:

- Account for the pH value, they must cancel the test and take no further action.
- Fail to account for the pH value, they must cancel the test and direct another collection under direct observation.

Disclosure of Information

The MRO will not disclose medical information provided by the individual to the MRO as part of the testing verification process to any third-party, except as provided in §40.327.

Before obtaining medical information from the employee as part of the verification process, the MRO will advise the employee that the information may be disclosed to third-parties as provided above and will share the identity of any parties to whom the information may be disclosed.

The MRO must report a possible medical disqualification and/or safety risk to all the relevant entities that are applicable to the situation, such as a medical examiner, employer, substance abuse professional, FMCSA, and the National Transportation Safety Board, in the course of an accident investigation.

Split Specimen Procedures

The MRO will notify each employee who has a verified positive test that he/she has 72 hours in which to request a test of the split specimen. If the employee requests an analysis of the split specimen within 72 hours of such notice, the MRO will direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. The employee will not be allowed to request a reanalysis of the primary specimen and any retest will be at the employee's expense, unless prohibited by state law.

If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing, or un-testable, the MRO will cancel the test and report the cancellation and the reasons for it to the DOT, the employer, and the employee; however, because some analytes deteriorate or are lost during freezing and/or storage, quantization for a retest is not subject to a specific cut-off requirement.

If an employee has not contacted the MRO within 72 hours, the employee may present the MRO with information documenting that serious illness, injury, inability to contact

the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from making timely contact with the MRO. If the MRO concludes that there is a legitimate explanation of the employee's failure to contact him/her within 72 hours, the MRO will direct that analysis of the split specimen be performed.

CONFIDENTIALITY AND RECORDKEEPING [PART 40 SUBPART P]

Confidentiality

Town of Milliken will maintain all records generated under this policy in a secure manner so that disclosure to unauthorized persons does not occur. Thus, the results of any tests administered under this policy and/or any other information generated pursuant to this policy will not be disclosed or released to anyone without the specific written consent of the employee, except where otherwise required or authorized by law. In addition, Town of Milliken's contract with its designated laboratory requires all employee test records to be maintained in confidence.

The laboratory or Town of Milliken may disclose information required to be maintained under this policy to the employee, the employer, or the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or drug test administered under this policy, or from the employer's determination that the employee engaged in conduct prohibited by this policy (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

Access to Facilities and Records

Upon written request by any covered employee and in accordance with §40.329 and §382.405, Town of Milliken or its service agents will promptly provide copies of any records pertaining to the employee's use of alcohol or drugs, including any records pertaining to his/her alcohol or drug tests. The employee will be required to pay the employer a fee for the requested documents, unless prohibited by federal or state law.

Town of Milliken will also permit access to all facilities utilized and alcohol or drug testing documents generated in complying with Part 382 requirements to the Secretary of Transportation, any DOT agency with regulatory authority over the employer or any of its covered employees, or to a state oversight agency. When requested by the National Transportation Safety Board as part of an accident investigation, Town of Milliken will disclose information related to the employer's administration of a post-accident alcohol and/or drug test administered following the accident under investigation.

Records will also be made available to an identified person or a subsequent employer upon receipt of a specific written request from an employee, but only as expressly authorized and directed by the terms of the employee's specific written consent. The subsequent release of such information by the person receiving it will be permitted only in accordance with the terms of the employee's consent.

ASSISTANCE PROGRAM/SUBSTANCE ABUSE PROFESSIONAL (SAP) [PART 40 SUBPART O]

Employee Education

According to §382.601, Town of Milliken must provide employees subject to this policy with educational materials explaining the requirements of the DOT alcohol and drug testing regulations and the Town of Milliken policies and procedures for meeting them. In addition, employees will be provided with information concerning the effects of drug use and alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee's or a co-worker's); and available methods of intervening when an alcohol or drug problem (the employee's or a co-worker's) is suspected, including confrontation, referral to an employee assistance program, and/or referral to management. This information will include display and distribution of informational material.

Copies of the above materials and this policy will be distributed to each covered employee prior to the start of any DOT alcohol and/or drug testing required herein, and to each employee subsequently hired or transferred into a position requiring the performance of a safety-sensitive function covered by this policy. Each employee who receives a copy of these materials will be required to sign a statement certifying that he or she has received a copy of the same. Town of Milliken will retain the original of the signed certificate, and will provide a copy to the employee, if requested. Town of Milliken will also provide written notice to representatives of employee organizations as to the availability of this information, if applicable.

Supervisor Training

Every individual designated to determine whether reasonable suspicion exists to require a covered employee to undergo a drug or alcohol test under this policy will be required to receive at least 60 minutes of training on alcohol misuse and 60 minutes of training on drug use under §382.603. This training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and prohibited drug use and will cover reasonable suspicion. This training will also include the policies of Town of Milliken, and how they correlate with the regulations.

Referral, Evaluation, and Treatment

AVAILABLE RESOURCES

Any employee who engages in conduct prohibited by this policy will be provided with information about the resources available for evaluating and resolving problems associated with the misuse of alcohol or prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs), and counseling and treatment programs.

SUBSTANCE ABUSE EVALUATION

Although an employee's employment with Town of Milliken will be terminated for a violation of this policy, unless prohibited by state law, and an agreement with an independent contractor will also be terminated, drivers will be advised to undergo an evaluation by an appropriate SAP, who will determine what, if any, assistance the employee may need in resolving problems associated with alcohol misuse and/or prohibited drug use. This requirement will apply regardless of whether such conduct is discovered as a result of a positive drug or alcohol test, independent employer knowledge, or a voluntary admission by the employee. The referral, evaluation, and rehabilitation requirements outlined above apply to applicants who refuse to submit to (as outlined in §40.191 and §40.261) or test positive in a pre-employment test.

SUBSTANCE ABUSE PROFESSIONAL (SAP)

For purposes of this policy, a SAP is defined as a licensed physician (MD or DO), or a licensed or certified psychologist, social worker, employee assistance professional,) certified marriage and family therapist; or a drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap> who has knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The SAP's role is to evaluate the employee's need for assistance in resolving problems related to alcohol or drug abuse, determine if the employee has complied with any recommended treatment or rehabilitation, and to determine a program of follow-up testing as appropriate.

Self-Identification Program

Town of Milliken has established an employee admission policy that permits covered employees to self-identify drug use or alcohol abuse without DOT consequences.

In order to utilize the employee admission policy, the driver:

- Cannot self-identify in order to avoid testing under the requirements of Part 382;
- Must make the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and

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- Cannot perform a safety-sensitive function until the employer is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

The self-identification program:

- Prohibits Town of Milliken 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 §382.121(a);
- Allows the employee sufficient opportunity to seek evaluation, education, or treatment to establish control over the employee's drug or alcohol problem;
- Permits 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); and
- Ensures that:
 - Prior to the employee participating in a safety-sensitive function, the employee undergoes a return-to-duty test with a result indicating an alcohol concentration of less than 0.02; and/or
 - Prior to the employee participating in a safety-sensitive function, the employee undergoes a return-to-duty controlled substance test with a verified negative test result for controlled substances use.

Town of Milliken is also incorporating employee driver monitoring to include non-DOT follow-up testing as allowed in §382.121.

DISCIPLINARY ACTION (EMPLOYEE OR INDEPENDENT CONTRACTOR)

When a drug or alcohol test is positive, employees will be removed from a safety-sensitive position as required under the FMCSR. It will also result in discipline up to and including termination, as allowed by state law. A positive pre-employment test will be a disqualifier for employment when allowed by state law. All applicable state laws will be followed.

RECORDKEEPING AND REPORTING [PART 40 SUBPART P AND PART 382 SUBPART D]

Retention of Records

Town of Milliken will maintain records relating to this policy as outlined in §382.401 and §40.333. These records will be maintained in a secure location (locked file cabinet or password protected data) with controlled access for the specified periods of time measured from the date of the document's or data's creation.

Management Information System Reporting

When required by the FMCSA, Town of Milliken will prepare and submit an annual statistical report, in the format prescribed by the FMCSA, detailing Town of Milliken's controlled substances and alcohol testing program activity.

13.4 Appendix E: Receipt for DOT Drug and Alcohol Testing Policy

I, _____, hereby certify that I have been provided with a copy of Town of Milliken's DOT Drug and Alcohol Testing Policy and information concerning the effects of alcohol and controlled substances use. I have read and understand the policies and procedures and agree to abide by them.

Date: _____ Employee Signature: _____

Town of Milliken

Drug & Alcohol Policy Addendum-CDL/DOT Drivers

Effective Date: 01/28/2026

To be added to the Town of Milliken Drug and Alcohol Policy for CDL Drivers who are subject to Federal Motor Carrier Safety Administration (FMCSA) Controlled Substance (Drug) and Alcohol Testing Policy. It is considered part of the official policy and must be read and acknowledged by all employees to whom it applies.

Section I: Colorado Open Records Act (CORA)

The Colorado Open Records Act (CORA), C.R.S. § 24-72-200.1 et seq., establishes that public records maintained by the Town of Milliken are open for inspection by the public, with certain exceptions as provided by law.

Drug and alcohol testing records, including those related to CDL (Commercial Driver's License) holders, may contain confidential or sensitive information. These records will be managed in accordance with CORA, which may in some circumstances incorporate federal or state confidentiality restrictions.

Requests for records under CORA must be submitted in writing to the Town Clerk or designated CORA Custodian in accordance with any applicable CORA policy and will be processed accordingly.

Section II: Driver's Self-Reporting – What You Need to Know

If you hold a CDL and fail or refuse a DOT drug or alcohol test, you are legally required to notify every employer for whom you currently perform safety-sensitive functions, even if the violation occurred while working for another company.

You must provide notification:

- In writing, and
- Before the end of the business day following the day you receive notice of the violation, or prior to performing any safety-sensitive function, whichever occurs first.

Example:

If you drive part-time for two companies and test positive on a DOT pre-employment test for one of them, you must notify the other company by the end of the next business day. This requirement is mandated under **49 CFR § 382.415**.

I acknowledge that I have received, read, and understand the above addendum to the Town of Milliken Drug & Alcohol Policy. I agree to comply with the requirements outlined herein.

Printed Name: _____

Signature: _____

Date: _____

Town of Milliken

Drug & Alcohol Policy Addendum-Non-CDL Drivers

Effective Date: 01/28/2026

Applies to: Non-DOT Drivers, Employees Who Regularly Operate Town-Owned Vehicles As Part Of Their Assigned Duties, Safety-Sensitive Positions

To be added to the Town of Milliken Drug and Alcohol Policy for Non-CDL Drivers who are subject to the Town of Milliken's Substance (Drug) and Alcohol Testing Policy. It is considered part of the official policy and must be read and acknowledged by all employees to whom it applies.

Section I: Colorado Open Records Act (CORA)

The Colorado Open Records Act (CORA), C.R.S. § 24-72-200.1 et seq., establishes that public records maintained by the Town of Milliken are open for inspection by the public, with certain exceptions as provided by law.

Drug and alcohol testing records, including those related to CDL (Commercial Driver's License) holders, may contain confidential or sensitive information. These records will be managed in accordance with CORA, which may in some circumstances incorporate federal or state confidentiality restrictions.

Requests for records under CORA must be submitted in writing to the Town Clerk or designated CORA Custodian in accordance with any applicable CORA policy and will be processed accordingly.

Section II: Driver's Self-Reporting – What You Need to Know

Employees who regularly operate town-owned vehicles as part of their assigned duties or hold safety-sensitive positions and are not covered under the CDL driver policy must report any traffic citations (excluding parking tickets) to their supervisor or HR as soon as possible, but no later than 5 business days after receiving notice of the violation.

I acknowledge that I have received, read, and understand the above addendum to the Town of Milliken Drug & Alcohol Policy. I agree to comply with the requirements outlined herein.

Printed Name: _____

Signature: _____ **Date:** _____

Parental Consent Form For Minors



**Town of Milliken
Parental Consent for Employee Drug Testing**

My minor child, _____, has been offered employment by the Town of Milliken (herein known as "the Town"). I fully understand that as an employee of the Town, my child will be subject to the Town's Drug and Alcohol Policy.

My child has been provided a copy of this policy, and I hereby acknowledge that I have thoroughly read and understand its terms and provisions.

My signature hereon serves as parental consent:

- a) For my child to undergo pre-employment drug testing and to submit a urine sample for that purpose;
- b) For my child to be further drug and alcohol tested in accordance with the terms of the Town's policy and as permitted by law;
- c) A urine sample will be collected at a medical facility and tested by that facility in accordance with our Drug and Alcohol Policy for the presence of substances prohibited by the policy;
- d) For the Town to obtain the results of my child's drug test from a certified laboratory for use in accordance with the Town's policy.

Questions regarding this process may be directed to the Town's Human Resources Department, Kathryn Kindsfather, at 970-660-5040, or to the Town Administrator, Cheryl Powell, at 970-660-5049.

PRINTED NAME: _____

SIGNATURE: _____

DATE: _____

Parental Consent Form For Minors