



POLICY: VII: 05 – Drug and Alcohol Testing for Commercial Driver’s License Holders

Procedure Review: Annually

DATED: May 2022

UPDATED: September 2023

APPROVED: Executive Director of Facilities and Construction:

I. PURPOSE

To promote campus and highway safety, the university will conduct mandatory drug and alcohol testing of employees who possess commercial driver's licenses (CDL) and use them in performance of their university jobs. This policy is applicable to Facilities Management (FM) employees who possess valid CDLs.

II. DEFINITIONS

- A. Alcohol - Any product as defined in “The Alcoholic Beverage Control Act”, section 4.1-100 of the Code of Virginia.
- B. Adulterated Specimen - A specimen that contains a substance that is not expected to be present in human urine or contains a substance expected to be present but at a concentration so high that it is not consistent with human urine.
- C. Commercial Driver's License (CDL) - Any of three types of commercial driver's licenses required to operate vehicles as described:
 - 1. Class A: Any combination of vehicles with a gross combination weight rating (GCWR) of 26,001 pounds or more if the vehicle(s) being towed has a gross vehicle weight rating (GVWR) of more than 10,000 pounds. Vehicles in this class include:
 - Tractor-trailer
 - Truck and trailer combinations
 - Tractor-trailer buses

If you hold a class A license and have the correct endorsements, you may also operate vehicles listed in classes B and C.

- 2. Class B: Any single vehicle with a GVWR of 26,001 pounds or more. Any single vehicle with a GVWR of 26,001 pounds or more towing another vehicle with a GVWR of 10,000 pounds or less. This class includes:
 - Straight trucks
 - Large buses
 - Segmented buses
 - School buses
 - Trucks towing vehicles with GVWR of 10,000 pounds or less

If you hold a class B license and have the correct endorsements, you may also operate vehicles listed in class C.

3. Class C: Any vehicle that is not included in classes A or B that carries hazardous materials requiring placards or is designed to carry 16 or more occupants, including the driver.
- D. Contract Testing Facility - A medical facility, including its laboratory, certified for alcohol and drug testing by the U.S. Department of Health and Human Services.
- E. Covered Employee - An employee who possesses a CDL and uses it in performance of their university job.
- F. Covered Position - A position, job or assignment in which an employee may be required or allowed to operate state-owned vehicles or equipment requiring a valid CDL.
- G. Controlled Substance - Any controlled substance included in Schedules I through VI of the Drug Control Act, Title 54.1, Chapter 3401 of the Code of Virginia, as amended, whose manufacture, distribution, dispensation, use, or possession is controlled by law.
- H. Medical Review Officer (MRO) - A person who is a licensed physician and 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.
- I. Other Drug - Any substance, other than alcohol, that may be taken into the body and may impair mental faculties and/or physical performance.
- J. Substance Abuse Professional - A person who evaluates employees who have violated a Department of Transportation drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.
- K. Positive Results - A positive drug test result indicates that the drug for which a specimen was being tested is present (or markers indicating its use are present) in that specimen. Refusal to take a drug will be considered a positive result.

III. RESPONSIBILITIES

- A. Executive Director of Facilities and Construction - Responsible for the department's prompt, effective adherence to this policy.
- B. Directors and Managers - Shall ensure covered employees are informed of this policy and any subsequent changes.
- C. Supervisors of covered employees - Responsible for completing the General Consent for Limited Queries of the Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Clearinghouse, evaluating the fitness of their covered employees to perform their duties and taking corrective action when appropriate. Supervisors of covered employees are also required to participate in the drug and alcohol program overview and substance abuse training provided by the university.

IV. PROCEDURES

- A. All university employees have a responsibility to ensure their duties are not impaired by the use of drugs or alcohol. See Policy 1110 - Alcohol and Other Drugs. Further, employees who hold CDLs and use them to operate state-owned vehicles and equipment or other vehicles requiring a valid CDL are subject to a higher degree of regulation than other drivers. CDL holders will keep their supervisors informed as to any medications they are using which may affect their work. Employees testing positive or refusing to take a test will be immediately removed from duties. This procedure is applicable to all current and future FM employees. Human Resources staff will inform employees at the time of hire, if the position is a covered position. Sanctions may vary according to the employee's classification and may result in termination.
- B. Covered employees will be designated for alcohol and drug testing under the conditions listed below. A refusal to take the tests, the discovery of an adulterated specimen, or tampering with the sample may result in disciplinary action up to and including termination of employment:
1. Pre-Employment: As a condition of employment, individuals selected for covered positions will be tested prior to the first time a driver performs safety-sensitive functions for JMU. Applicants will be advised of the policy and the procedure at the time an offer for employment is made (verbally and in writing as part of the offer letter consistent for those possessing a valid CDL and may use it in the performance of the job). A positive test result from an applicant will result in JMU rescinding the offer of employment.
 2. Reasonable Suspicion: Covered employees will be tested whenever the individual's behavior or appearance causes the supervisor to question the employee's ability to perform their CDL related duties safely. The elements of the constructive confrontation by a supervisor are to identify and confront the individual, to confirm the behavior/appearance/odor/speech, and to document the incident by completing the Behavior/Incident Documentation. If possible, the confrontation should be made in person by the supervisor, with a witness to the event.
 3. Random: Covered employees will be tested whenever the random selection process designates the employee for testing. Employees being randomly tested will not routinely be relieved of CDL related duties while the results are being analyzed.
 4. Post-Accident: Covered employees will be tested any time they are involved in an on-the-job commercial vehicle accident resulting in a citation for moving violations arising from an accident that requires: (1) a vehicle to be towed, (2) an injury requiring immediate medical attention away from the scene, or (3) resulting in a fatality. The alcohol breathalyzer test must be administered within two hours and the controlled substances test must be conducted within 32 hours of the accident. Covered employees are prohibited from using alcohol or controlled substances following an accident until after they have been tested. Employees are required to report accidents to their supervisor immediately. Failure to report a vehicle accident will result in disciplinary action. If the accident results in the death of the employee, blood/urine samples will be tested for the presence of drugs/alcohol.

5. Other Testing: Covered employees will be tested when any of the following events have occurred: (1) after completing a drug and alcohol rehabilitation program, (2) before being allowed to return to work and perform CDL related duties following a positive test, or (3) after having refused to be tested. After returning to work, these covered employees will be tested randomly at least six times during the next 12 months. A refusal to be re-tested may result in termination of employment. Further, employees in this re-testing group will also continue to be part of the random testing pool.

C. Supervisors of covered employees are responsible for observing performance of the employees daily duties. In the event covered employees do not appear able to perform their CDL related functions safely, supervisors must relieve these employees of their duties, document the circumstances, and notify Human Resources or the departmental designee so those individuals may be tested. In the event Human Resources or the departmental designee is not available to arrange the tests, supervisors are approved to work directly with the Contract Medical Facility. The Employer Authorization form must be completed and taken to the facility at the time of testing. If the Contract Medical Facility is closed, supervisors may utilize the nearest ER.

Supervisors of covered employees are also required to participate in the drug and alcohol program overview and substance abuse training provided by the university.

D. Vendors and contractors providing goods and service for the university shall be able to show compliance to the aforementioned regulations upon request. Contracting authorities who initiate or solicit the services of vendors and contractors should ensure that proof of vendor/contractor compliance is received before entering into any contractual arrangement including the issuing and authorization of an official purchase order.

V. TESTING

A Contract Medical Facility will conduct the tests, analyze the results, and counsel covered employees regarding the outcome of the test(s). Only personnel trained in the use of equipment and taking specimens will be involved in the testing process. Further, JMU will rely on the Contract Medical Facility and its Medical Review Officer (MRO) to provide appropriate documented data and testimony in the event the test results in an adverse employment action or a grievance.

A. Testing Process

1. Random Selection. The Contract Medical Facility will conduct a random selection of covered employees quarterly. Some covered employees may be selected more than once per year. After selection, Risk Management or the departmental designee will notify the employee to proceed to the Contract Medical Facility as soon as feasible. If an employee is not readily available, they will be notified and tested upon return to the work site.
2. Selective Testing. Selective testing occurs: (1) pre-employment, (2) for reasonable suspicion, or (3) post-accident. In cases where covered employees are designated for selective testing, the supervisor will request Human Resources for pre-employment or the Risk Management Training Coordinator for reasonable suspicion or post-accident to make the appointment. The supervisor or designee will then transport the individual to the Contract Medical Facility as soon as feasible. Applicants for covered positions completing pre-employment testing will transport themselves. Employees

who are being tested for these reasons will not be restored to duty or to the applicant pool until after the MRO determines that the test results are negative.

3. Alcohol Test. The Contract Medical Facility will test the breath of the covered employee for the presence of alcohol. In the event alcohol level does not exceed .02, the results will be recorded as negative and the employee will usually return to their normal duties. If the test results indicate the alcohol level to be between .02 and .04, the covered employee will be placed on leave without pay (LWOP) for the remainder of the day and will be re-tested the next day or prior to performing CDL related duties. If the alcohol level exceeds .04, the covered employee will be suspended from work indefinitely (not less than 30 days) and applicants for covered positions will not be further considered for the position, unless the MRO so recommends. Human Resources, Risk Management and the department head will be notified of the results of the test.
 4. Drug Test. A split urine sample will be taken from covered employees and analyzed for the presence of marijuana, cocaine, opiates, phencyclidine, and amphetamines. Any trace of an illegal substance will be considered a positive result. The MRO will determine whether or not the results indicate further testing or counseling is appropriate. When a covered employee has been referred to the Contract Medical Facility for reasonable suspicion, the MRO will also consider the supervisor's observations. The Contract Medical Facility is responsible for safeguarding the split sample for a possible second analysis.
- B. In the event of a positive test result, the MRO will have a confidential discussion (in person or by phone) with the covered employee as soon as feasible whenever there are positive results to the tests. In the case of alcohol, a positive result is anything above the .02 level. The MRO will determine if there is a legitimate explanation for any deviation from the normal. Covered employees will have 72 hours to decide if they would like the split urine specimen sent to another laboratory, to have the split examined in the same laboratory, or take no action in the matter. Any alternative laboratory that performs testing must also be certified for alcohol and drug testing by the U.S. Department of Health and Human Services. The employing department will pay for the second analysis only if it results in a negative presence of alcohol or illegal substance. At the conclusion of the counseling, the MRO will contact Risk Management or the departmental designee.
- C. Supervisors of covered employees will be given a minimum of 60 minutes of training on controlled substance abuse and 60 minutes on alcohol misuse annually. This training will include information on how alcohol and drugs affect work performance, the alcohol and drug testing process or refusal of a test, employee assistance programs, and possible corrective action in the event of a positive test. Supervisors of covered employees will also be given training on how to recognize, confront, and document incidents possibly caused by substance abuse.

Covered employees will be given a minimum of 60 minutes of training annually on controlled substance abuse and alcohol misuse, how alcohol and drugs affect work performance, the alcohol and drug testing process, employee assistance programs, and possible corrective action in the event of a positive test or refusal of a test.

The Safety Training Coordinator will schedule the annual training and communicate these details to the supervisors and employees that possess a CDL.

D. Covered employees testing positive for drugs or above the .04 alcohol level will be immediately removed from all CDL related duties and the employee may be terminated. Classified employees will be charged with a Group III violation of the State's Standards of Conduct, which alone may warrant termination. As a corrective action, the covered employee may be suspended without pay for 30 days and referred to a substance abuse professional. The covered employee will be expected to satisfactorily complete the prescribed treatment as a condition of their return to work. Payment for the treatment is the responsibility of the employee.

E. Other Disciplinary Action

1. Covered employees who commit a first offense under this policy, and who are being actively disciplined for any other reason, will normally be terminated.
2. After returning to work from rehabilitation treatment, any subsequent disciplinary action will also normally result in termination.
3. The above guidelines notwithstanding, university management reserves the right to apply the full range of disciplinary actions, considering mitigating circumstances.
4. Repeat offenses with or without an active disciplinary notice for violations under this policy will result in further disciplinary action up to and including termination.

Prior to being reassigned to a covered position, covered employees must undergo substance abuse testing and counseling by the same substance abuse professional. If returned to duty, the employee will be subject to a minimum of six unannounced follow-up tests over the next 12 months of active service with the possibility of unannounced testing for up to 60 months (as prescribed by the substance abuse professional).

F. All records and correspondence for covered employees must be maintained and available during the length of employment plus five years. The material will consist of the offer letter, training periods, and tests conducted for any reason. In addition, the Office of Risk Management will maintain a confidential file concerning any positive alcohol and drug tests, moving vehicle accidents as they pertain to this policy, communications with the MRO, related corrective actions, and reports of drug/alcohol tests for reasonable suspicion. All recordkeeping that is required by law and listed in the U.S. Department of Transportation's Office of Drug & Alcohol Policy & Compliance Rule (49 CFR Part 40) may be kept by the Contract Medical Facility, as long as it can provide the information within two business days of an official request by Department of Transportation officials. The information will be released on a need-to-know basis only.



**JAMES MADISON
UNIVERSITY.**

OFFICE OF RISK MANAGEMENT

**General Consent for Limited Queries of the Federal Motor Carrier Safety
Administration (FMCSA) Drug and Alcohol Clearinghouse**

I, _____, hereby provide consent to James Madison University (JMU) for the purpose of conducting limited queries of the FMCSA Commercial Driver’s License Drug and Alcohol Clearinghouse (Clearinghouse) to determine whether drug or alcohol violation information about me exists in the Clearinghouse. This authorization is valid for the duration of my employment.

This authorization allows JMU to conduct at least one limited query annually, but may perform additional limited queries during a calendar year.

I understand that if the limited query conducted by JMU indicates that drug or alcohol violation information about me exists in the Clearinghouse, the FMCSA will not disclose that information to James Madison University without first obtaining a specific electronic consent from me to conduct a full query.

I understand I will be required to register with the Clearinghouse in order to grant electronic consent for any full query. I further understand that if I refuse to provide consent for JMU to conduct a limited or full query (when a limited query reports that information exists) of the Clearinghouse, JMU must prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA’s drug and alcohol program regulations.

Employee Signature

Date

Printed Name

Employee ID #

Date of Birth

Driver’s License Number

State of Issue

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