

DRUG AND ALCOHOL TESTING OF SAFETY-SENSITIVE EMPLOYEES

Purpose

In compliance with the Omnibus Transportation Employee Testing Act of 1991, all safety-sensitive employees, including those operators of commercial motor vehicles (CMV) and those with commercial driver's licenses (CDL) are required to be tested for controlled substances and alcohol as further set forth in the Department of Transportation's (DOT) rules at 49 CFR parts 40 and 382.

Scope

This policy describes the requirement for workplace drug and alcohol testing for the Federally regulated transportation industry and safety-sensitive employees. This policy applies to all employees or applicants who are required to have a commercial driver's license and/or perform certain safety-sensitive functions.

Relationship to Policy GBCB

This policy supplements Policy File GBCB *Drug Free Workplace and Testing*, which details the District-wide testing program that is in addition to, and distinct from, the required DOT testing program set forth in this policy. Policy GBCB is based on the District's authority to adopt independent testing procedures and consequences for violations of policy. Nothing in this policy shall prohibit the District from requiring non-DOT testing of any employee under its independent authority as set forth in Policy GBCB. Safety-sensitive employees are subject to and must adhere to the requirements of both policies. A safety-sensitive employee may be disciplined under either policy or both.

Prohibitions on the Use of Alcohol and Controlled Substances

Alcohol. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No driver shall use alcohol while performing safety-sensitive functions. No driver shall perform safety-sensitive functions within four hours after using alcohol. No driver required to take a post-accident alcohol test under 49 CFR §382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first. No driver shall refuse to submit to a pre-employment controlled substance test required under 49 CFR §382.301, a post-accident alcohol or controlled substance test required under 49 CFR §382.303, a random alcohol or controlled substances test required under 49 CFR §382.305, or a reasonable suspicion alcohol or controlled substance test required under 49 CFR §382.307. *See*, 49 CFR §382.201, 205, 207, 209, 211.

Controlled Substances. No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions when the driver uses any drug or substance identified in 21 CFR 1308.11 Schedule I. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 49 CFR §382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers are required to inform the District of any therapeutic drug use and provide documentation from their prescribing physician that the substance will not adversely affect the employee's ability to safely operate a commercial motor vehicle. No driver shall report for duty, remain on duty, or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. *See*, 49 CFR §382.213, 215.

Required Testing

Alcohol and drug testing is required of employees performing safety-sensitive functions consistent with the provisions set forth in 49 CFR Parts 40 and 382 and this Policy.

A. Pre-employment

Pre-employment testing will be required of all safety-sensitive applicants before employment with the District (49 CFR §382.301). Any applicant who tests positive in the pre-employment screening will not be hired and is not eligible to re-apply for employment with the District. Refusal to submit to testing will result in disqualification of further employment consideration.

B. Random

Random drug and alcohol testing is a mandatory requirement for safety-sensitive employees under 49 CFR § 382.305. Random testing will be conducted at intervals spread throughout the year and will not be announced. Random testing may be conducted just before, during, or just after a covered employee's performance of safety-sensitive duties. An employee who is notified of selection for random alcohol and/or controlled substances testing is required to proceed to the test site immediately.

The total number of random drug tests conducted each year will be equal to at least 50% of the safety-sensitive employees. The total number of random alcohol tests conducted each year will be equal to at least 25% of the safety-sensitive employees.

C. Reasonable suspicion

Employees who appear to be under the influence of drugs or alcohol will be immediately tested as required by 49 CFR §382.307. A driver may be directed to undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions. A reasonable suspicion test may only be conducted when a trained supervisor has observed specific, contemporaneous, articulable appearance, speech, body odor, or behavior indicators of alcohol

use. Administrators/supervisors must use the Reasonable Suspicion Impairment Inventory found in Policy File GBCB-E to document specific observations.

Time is of the essence in acting upon the observations. Administrators/supervisors must promptly submit their recommendations for reasonable suspicion of drug and alcohol testing to the Director of Human Resources for approval and authorization for testing. When reasonable suspicion for testing is warranted, both an administrator/supervisor and an HR representative will meet with the employee to explain the observations and the requirement to undergo a drug and/or alcohol test.

If an alcohol test required by this section is not administered within two hours following the determination to test, the District shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination to test, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

Under no circumstances will an employee believed to be impaired be allowed to drive himself or herself to the testing facility. A member of District administration must transport the employee or arrange for transportation and arrange for the employee to be transported home. An employee will not be permitted to return to work while awaiting test results.

All employees designated to supervise drivers will receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under 49 CFR § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

D. Post-accident

49 CFR §382.303 requires drug and alcohol tests after incidents involving CMVs.

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the District will test for alcohol for each of its surviving drivers:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

- (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the District will test for controlled substances for each of its surviving drivers:

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

The following table summarizes when a post-accident test is required to be conducted by 49 CFR §382.303:

| Type of Accident Involved | Citation Issued to CMV Driver | Test Must be Performed |
|--|-------------------------------|------------------------|
| Human Fatality | YES | YES |
| | NO | YES |
| Bodily Injury with Immediate Medical Treatment Away from the Scene | YES | YES |
| | NO | NO |
| Disabling Damage to Any Motor Vehicle | YES | YES |
| | NO | NO |

Post Accident Testing Procedures:

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

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

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

The District provides all drivers with necessary post-accident information, procedures and instructions prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

Testing Results: The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer. The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

Exception. This section does not apply to:

- (1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or
- (2) An occurrence involving only the loading or unloading of cargo; or
- (3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in § 571.3 of CFR title 49) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of CFR title 49.

Under no circumstances will an employee believed to be impaired be allowed to drive himself or herself to the testing facility. A member of District administration must transport the employee or arrange for transportation and arrange for the employee to be transported home. An employee will not be permitted to return to work while awaiting test results.

E. Return to Duty

Return to Duty drug and alcohol testing is not available under District policy if a covered safety-sensitive employee has a verified positive drug or alcohol test, or has been involved in any other activity that violates the Federal regulations, or any of the other District policies, including refusal to submit to testing. The employee will be immediately suspended, and subsequently terminated from District employment.

Collection and Testing Procedures

Testing will adhere to the procedures outlined in 49 CFR part 40.

Alcohol Testing. Employees subject to alcohol testing will be transported to a District designated collection facility or met on-site and directed to provide required specimens. Breath specimens will be tested by trained technicians using federally approved breath alcohol testing devices capable of producing printed results that identify the employee. If an employee's breath alcohol concentration is .04 or more, a second breath specimen will be tested approximately 20 minutes later. The results of the second test will be determinative. Alcohol tests may, however, be a breath, blood or saliva test, at the District's or collection facility's discretion. Positive test results generated by law enforcement or medical providers may be considered by the District in determining violations of this policy.

Drug Testing. Applicants and employees subject to drug testing will be transported to a District designated testing facility or met on-site and directed to provide urine specimens. Applicants and employees may provide specimens in private unless they appear to be submitting altered, adulterated or substitute specimens. Collected specimens will be sent to a federally certified laboratory and tested for evidence of marijuana, cocaine, opioids, amphetamines, and phencyclidine (PCP). The laboratory will screen all specimens and confirm all positive screens. There must be a chain of custody from the time specimens are collected through testing and storage.

Results. Negative test results will be provided to the District within three working days after the test result. An applicant or employee will receive written notification of the test result within three working days after the District is notified of the result.

The laboratory will transmit all positive drug test results to a medical review officer (MRO) retained by the testing facility, who will offer individuals with positive results a reasonable opportunity to rebut or explain the results. Individuals with positive test results may also ask the MRO to have their split specimen sent to another federally certified laboratory to be tested at the applicant's or employee's own expense. Such requests must be made within 72 hours of notice of test results. If the second facility fails to find any evidence of drug use in the split specimen, the applicant or employee will be treated as passing the test. In no event should a positive test result be communicated to the District until such time that the MRO has confirmed the test to be positive.

Positive test results will be communicated to the District in writing within a reasonable period after any confirmatory test. An applicant or employee will receive written notification of a positive test result within three working days after the District is notified of such result. Inconclusive or invalid results will be treated as positive test results.

All costs related to alcohol and drug testing will be paid by the District, with the exception of confirmatory retests, which must be paid by the applicant or employee requesting the retest.

Consequences

Applicants who refuse to cooperate in a drug test, or who test positive, will not be hired and will not be allowed to reapply/retest in the future.

Employees who refuse to cooperate in required tests or who test positive will be terminated. If the employee refuses to be tested, yet the District believes he or she is impaired, the employee will be directed not to drive him or herself home. The District may assist the employee in making alternative transportation arrangements.

Employees will be paid for time spent in alcohol or drug testing and then may be suspended, reassigned or placed on administrative leave pending the results of the drug or alcohol test. After the results of the test are received, the District will set a date and time to discuss the results of the test with the employee; this meeting will include an administrator or director, an employee representative (if requested by the employee), and an HR representative. Should the results prove to be negative, the employee will be authorized to return to work.

Reporting of Test Results, Handling of Test Results, Records Retention, and Confidentiality

Reporting and handling of test results, records retention, and confidentiality of records will comply with the requirements and procedures set forth 49 CFR part 382 subpart D.

Due Process

Any dispute by an employee regarding the interpretation, administration or enforcement of this policy shall be resolved in accordance with the grievance procedure set forth in District Policy File GBM. However, the filing of a grievance shall not be construed as delaying the referral of an employee for testing or removal from duties in accordance with this policy.

Definitions

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

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

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

- (1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
- (2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or
- (3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

“Controlled substances” mean those substances identified in §40.85 of CFR title 49.

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

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

(2) *Exclusions*.

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

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

(iii) Headlight or taillight damage.

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

“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.

“Negative return-to-duty test result” means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02, as described in §40.305 of CFR title 49.

“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.

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

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a) of CFR title 49);

(2) Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see §40.63(c) of CFR title 49) a pre-employment test is not deemed to have refused to test;

- (3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c) of CFR title 49) for a pre-employment test is not deemed to have refused to test;
- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen (see §§40.67(l) and 40.69(g) of CFR title 49);
- (5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2) of CFR title 49);
- (6) Fail or declines to take a second test the employer or collector has directed the driver to take;
- (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d) of CFR title 49. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
- (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or
- (9) Is reported by the MRO as having a verified adulterated or substituted test result.

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

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

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Enforcement

The Director of Human Resources is responsible for policy interpretation, administration and enforcement.

Acknowledgment and Certificate of Receipt

I hereby certify that I have received a copy of the Sweetwater County School District Number One, State of Wyoming Drug and Alcohol Testing of Safety-Sensitive Employees Policy. I acknowledge that I have read and understand this policy and the DOT testing regulations that I am subject to.

Signature: _____

Printed Name: _____

Date: _____

Legal References: Omnibus Transportation Employee Testing Act of 1991.
49 C.F.R. 40
49 C.F.R. 382
Wyo. Stat. § 35-7-1001 et seq. Controlled Substances Act of 1971.

Cross Ref: GBCB