



Reference: *49 Code of Federal Regulations Part 40*

The District must comply with the United States Department of Transportation regulations implementing the Federal Omnibus Transportation Employee Testing Act of 1991. Specifically, the District must comply with the regulations of the Federal Highway Administration (FHWA) and, if applicable, the Federal Transit Administration (FTA). Adoption of a policy and/or procedure is one of the District's obligations under the regulations.

This procedure sets forth the rights and obligations of covered employees. Employees who are covered by these requirements should familiarize themselves with the provisions of this procedure. Employees shall refer any questions regarding his/her rights and obligations under this procedure to the Associate Vice Chancellor of Human Resources or designee.

Employees covered by this procedure should be aware that they are still required to comply with the provisions of the District's other policies and procedures regarding drugs and alcohol (Board Policy and Administrative Procedure 3550). The obligations and requirements set forth below are in addition to existing obligations and requirements set forth in the policy.

Employees in the following job classifications are "covered employees" and thus, are subject to all of the provisions of this procedure:

- Covered employees include regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers; and independent owner-operator contractors who are either directly employed by, or under lease to, an employer, or who operate a commercial motor vehicle at the direction of, or with the consent of, an employer.
- Covered employees also include all persons applying to drive a commercial motor vehicle.

Individuals who operate the following commercial motor vehicles are covered employees:

- A vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- A vehicle with a gross vehicle weight of at least 26,001 pounds;
- A vehicle designed to transport 16 or more passengers, including the driver; or
- A vehicle used to transport those hazardous materials found in the Hazardous Materials Transportation Act

The FHWA exempts those employees from mandatory drug and alcohol testing who are:

- Also covered by the FTA and required to comply with FTA alcohol and/or controlled substances testing (e.g., municipal bus drivers)
- Granted a full waiver from the requirements of the commercial driver's license program (e.g., The State of California exempts non-civilian military personnel operating military vehicles and individuals operating farm equipment which incidentally moves over a highway from obtaining a commercial driver's license)
- Granted an optional State waiver from the federal commercial driver's license requirements (49 CFR Part 383) (e.g., Fire fighters holding noncommercial driver's licenses. The State of California issues noncommercial driver's licenses which permit a fire fighter or volunteer fire fighter to operate fire fighting equipment, but not to transport passengers)

An employee may be given a written exemption from this procedure signed by the Associate Vice Chancellor of Human Resources or designee if, although the employee's classification is listed above, the employee does not fall within the definition of "covered employee" listed below.

FTA Agencies

Employees who perform "safety sensitive functions" as described below are "covered employees." Regardless of the definition of "safety sensitive functions" below, volunteers are only covered if they operate vehicles designed to transport 16 or more passengers.

Covered employees may not be under the influence or in possession of controlled substances or alcohol during work hours. Further, certain conduct is prohibited while performing, and prior to performing, safety sensitive functions.

Safety Sensitive Functions

The following are safety sensitive functions for FHWA Agencies:

- All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer
- All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR); or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time
- All time spent at the driving controls of a commercial motor vehicle
- All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth)
- All time loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle

The following are safety sensitive functions for FTA Agencies:

- Operation of a revenue service vehicle. A vehicle is in revenue service when the vehicle is available to the general public and there is a reasonable expectation of carrying passengers that directly pay fares, are subsidized by public policy, or provide payment through some contractual arrangement. This would include bus drivers, subway operators, drivers of van pools, etc. Drivers who operate federally funded van pools for commuting are currently covered by these regulations. Revenue service excludes school buses and charter buses which are not federally funded.
- Operation of a non-revenue service vehicle that meets the FHWA weight standards. This category includes drivers of snow plows, which are employed by or under contract to the transit entity and meet the designated weight requirements to require a commercial driver's license.
- Controlling dispatch or movement of a revenue service vehicles or equipment used in revenue service. This includes the dispatchers for buses, subways, vans, etc.
- Maintaining a revenue service vehicle. This does include maintenance workers.

Prohibitions

The following conduct is prohibited and may result in discipline, up to and including termination:

- Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration level of 0.04 or greater;
- Performing a safety sensitive function within four hours of using alcohol;
- Being on duty or operating a vehicle described above, while possessing alcohol;
- Using alcohol while performing a safety sensitive function;
- Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee used any controlled substances, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a vehicle;
- Reporting for duty or remaining on duty requiring the performance of safety sensitive functions if the employee tests positive for controlled substances;
- Refusing to submit to any alcohol or controlled substances test required by this procedure. A covered employee who refuses to submit to a required drug/alcohol test will be treated in the same manner as an employee who tested 0.04 or greater on an alcohol test or tested positively on a controlled substances test.

A refusal to submit to an alcohol or controlled substances test required by this procedure includes, but is not limited to:

- A refusal to provide a urine sample for a drug test;
- An inability to provide a urine sample without a valid medical explanation;
- A refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the testing process in a way that prevents the completion of the test;
- An inability to provide breath or to provide an adequate amount of breath without valid medical explanation;

- Tampering with or attempting to adulterate the urine specimen or collection procedure;
- Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
- Leaving the scene of an accident without a valid reason as to why authorization from a supervisor or manager (who has the responsibility to make a determination as to whether to send the employee for a post-accident drug and/or alcohol test) was not obtained.
- Consuming alcohol during the eight hours immediately following an accident, (the following clause only applies under the FTA - unless the covered employee has been informed that his or her actions have been completely discounted as a contributing factor as a contributing factor to the accident), or until the employee undergoes a post-accident alcohol test, whichever occurs first.

In addition to the above prohibitions, employees are reminded of their obligations under the Federal Drug Free Workplace Act of 1988. All employees covered by this procedure have previously been provided with a copy of the District's Drug Free Workplace Statement, and have signed an acknowledgment that they have read the Statement and agreed to comply with it.

Consequences for Employees

An employee whose alcohol test indicates an alcohol concentration level between 0.02 and 0.04 will be removed from his/her safety sensitive position for at least 24 hours under FHWA and eight hours under FTA.

Drug and Alcohol Testing

Drug and alcohol testing will be imposed on covered employees in the following circumstances.

- Pre-Employment Testing. All applicants for classifications which are covered by the Department of Transportation (DOT) regulations (see "covered employees" above), as well as all employees who transfer from classifications which are not covered to classifications which are covered, will be required to submit to pre-employment/pre-duty drug testing. Applicants will not be assigned to a safety sensitive position if they do not pass the test. There is no pre-employment alcohol test.
- Post-Accident Testing
 - FHWA Agencies: Post-accident drug and alcohol testing will be conducted on employees following an accident. Post-accident alcohol tests shall be administered within two hours following an accident and no test may be administered after eight hours. A post-accident drug test shall be conducted within 32 hours following the accident.

An accident occurs when as a result of an occurrence involving the vehicle an individual dies or when a State or local law enforcement authority issues a citation to the covered employee driver for a moving violation arising from the accident.

If no citation is issued, each surviving driver who was performing safety-sensitive functions with respect to the vehicle will be tested if the accident involved the loss of human life.

- FTA Agencies: Post-accident drug and alcohol testing will be conducted on employees following an accident unless the District determines, using the best information available at the time of the decision, that the covered employee's performance could be completely discounted as a contributing factor to the accident. Not only will the operator of the vehicle be tested, but so will any other covered employee whose performance may have contributed to the accident, such as a maintenance person.

Post-accident alcohol tests shall be administered within two hours following an accident and no test may be administered after eight hours. A post-accident drug test shall be conducted within 32 hours following the accident.

An accident occurs in the following circumstances:

- a. When an individual dies as a result of an occurrence involving the vehicle;
- b. When an individual suffers bodily injury as a result of an occurrence involving the vehicle; or
- c. When a vehicle suffers disabling damage. Disabling damage means damage to the vehicle which precludes departure from the scene in its usual manner in daylight after simple repairs.

Random Testing

Covered employees will be subject to random alcohol and drug testing as follows:

- A random alcohol test may be administered just prior to the employee performing a safety-sensitive function (e.g., driving); while the employee is performing a safety-sensitive function; or just after the employee has stopped performing a safety-sensitive function.
- The District will subject at least 10% of the total number of covered employees to random alcohol testing per year.
- A random drug test will be administered to at least 50% of the total number of covered employees per year. Some employees may be tested more than once in a year, while others are not tested at all depending on the random selection.
- On the date an employee is selected for random drug testing, his/her supervisor will ensure his/her duties are covered. The employee will receive a written notice in the morning indicating the time he/she is to report to the lab for testing.

Reasonable Suspicion Testing

Covered employees are also required to submit to an alcohol or drug test when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol or controlled substances. The observation must be based on short-term indicators such as blurry eyes, slurring, or alcohol on the breath. The supervisor

may not rely on long-term signs, such as absenteeism or tardiness, to support the need for a reasonable suspicion test.

The reasonable suspicion alcohol test will be administered within two hours of the observation. If not, the employer must provide written documentation as to why the test was not promptly conducted. No test may be administered after eight hours following the observation.

To ensure that supervisors are trained to make reasonable suspicion determinations, supervisors vested with the authority to demand a reasonable suspicion drug and alcohol test will attend at least one hour of training on alcohol misuse and at least one hour of training on controlled substances use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

Return to Duty/Follow-up Testing

A covered employee who has violated any of the prohibitions of this procedure must submit to a return to duty test before he/she may be returned to his/her position. The test result must indicate an alcohol concentration of less than 0.02 or a verified negative result on a controlled substances test. In addition, because studies have shown that the relapse rate is highest during the first year of recovery, the employee will be subject to follow-up testing which is separate from the random testing obligation. The employee will be subject to at least six unannounced drug/alcohol tests during the first year back to the safety-sensitive position following the violation.

Testing Procedures

- Alcohol Testing
 - Alcohol testing will be conducted by using an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration. Non-EBT devices may be used for initial screening tests.
 - A screening test will be conducted first. If the result is an alcohol concentration level of less than 0.02, the test is considered a negative test. If the alcohol concentration level is 0.02 or more, a second confirmation test will be conducted.
 - The procedures that will be utilized by the lab for collection and testing of the specimen are:
- Drug Testing
 - Drug testing will be conducted pursuant to the regulations set forth in 49 Code of Federal Regulations Part 40.

All drug test results will be reviewed and interpreted by a physician before they are reported to the employee and then to the District.

With all positive drug tests, the physician (also known as the “medical review officer”) will first contact the employee to determine if there is an alternative medical explanation for the positive test result. If documentation is provided and the physician determines

that there was a legitimate medical use for the prohibited drug, the test result may be reported to the District as “negative.”

Records

Employers are obligated to maintain records of the drug and alcohol misuse prevention programs, report the results in a management information system, and control access to the recorded information.

Employers are required to maintain the following records for a period of five years:

- The results of an employee's alcohol test which indicates an alcohol concentration level of 0.02 or higher;
- The results of an employee's controlled substances test which are positive;
- Documentation of any employee who refused to submit to a required alcohol/drug test;
- Calibration documentation; and
- Employee evaluations and referrals by substance abuse professionals.

Employers must retain records documenting the collection process for the alcohol and controlled substances tests and the training of supervisors for two years.

Employers must retain the records of any negative or canceled drug test or any alcohol test result which is less than 0.02 for one year.

By March 15 of each year, all covered employers must make available to the public a report summarizing the results of the alcohol misuse and controlled substances prevention program.

Employers may not release information concerning covered employees to third parties unless specifically authorized by statute. Employees, however, may request in writing to receive copies of any records pertaining to the employee's use of drugs or alcohol contained in the employee's file.

Employee Assistance Program

The District has established an Employee Assistance Program (EAP) to help employees who need assistance with alcohol and controlled substance abuse.

Information concerning the District's EAP is available through the Human Resources Office.

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