

## **Drug and Alcohol Testing – Transportation Personnel**

The following procedures shall govern the district's drug and alcohol misuse prevention program:

### **Program Coordinator**

The superintendent will be designated as the district's drug and alcohol misuse prevention program coordinator. The superintendent will coordinate the district's responsibilities and compliance efforts with the applicable provisions of the Omnibus Transportation Employee Testing Act of 1991. The superintendent will:

1. Ensure that all covered employees receive written materials explaining the district's drug and alcohol misuse prevention program requirements;
  - a. The district policy and administrative regulations;
  - b. A contact person knowledgeable about the materials, policy, administrative regulations and OTETA;
  - c. Categories of employees covered;
  - d. Information about the safety-sensitive functions and what period of the workday the employee is required to be in compliance. Safety-sensitive functions shall include such responsibilities as all on-duty time waiting to be dispatched, driving time, assisting or supervising loading or unloading, repairing, obtaining assistance or remaining in attendance upon a disabled vehicle. All time spent providing drug and alcohol samples, including travel time to and from the collection or testing site as needed to comply with random, reasonable suspicion, postaccident, return-to-duty or follow-up testing, will also be considered as on-duty time;
  - e. Specific information concerning prohibited conduct;
  - f. Circumstances under which employees will be tested;
  - g. Procedures used in the testing process;
  - h. The requirement that covered employees submit to drug and alcohol testing, administered in accordance with 49 C.F.R. Part 382;
  - i. Explanation of what constitutes a refusal to submit to a drug and/or alcohol test;
  - j. Consequences of violations (e.g., discipline up to and including dismissal as may be required by the district and removal from safety-sensitive functions as required by OTETA) and notification of resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and the use of drugs including the names, addresses and telephone numbers of Substance Abuse Professionals (SAPs) and counseling and treatment programs. Such information will include the consequences for counseling and treatment programs. Such information will include the consequences for covered employees found to have a breath alcohol concentration rate of 0.02 or greater, but less than 0.04, and for those employees found to have a breath alcohol content level greater than 0.04. Minimally, no driver tested and found to have a breath alcohol concentration rate of 0.02 or greater but less

than 0.04 shall be permitted to perform or continue to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test;

- k. Information on 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 (driver's or coworker's); and available methods of intervening when such problems are suspected, including confrontation, referral to an employee assistance program as available and/or referral to the administration.
2. Ensure that employees sign statements certifying that they have received the materials;
  3. Ensure that administrators/supervisors designated to determine reasonable suspicion receive at least 60 minutes of drug abuse training and an additional 60 minutes of alcohol misuse training. Training will include the physical, behavioral, speech and performance indicators of probable drug abuse and alcohol misuse;
  4. Ensure district compliance with applicable provisions of the Omnibus Act's requirements regarding the district's management information system, retention and confidentiality of records;
  5. Ensure selection of a site with appropriately trained personnel for the collection of specimens for drug testing;
  6. Ensure selection of a site with a certified breath alcohol technician and evidential breath testing devices for alcohol testing;
  7. Ensure selection of a laboratory certified by the Department of Health and Human Services (DHHS) to conduct drug specimen analysis;
  8. Ensure selection of a qualified medical or osteopathic doctor to serve as a Medical Review Officer (MRO) to verify laboratory drug test results;
  9. Ensure selection of qualified personnel to provide education and training to employees and supervisors in accordance with employee assistance program requirements as specified in the Omnibus Act.
  10. Ensure the district's drug use and alcohol misuse prevention program is maintained in at least outline form, on file and available for inspection at the district office. The district shall maintain the following:
    - a. The effects and consequences of drug and alcohol use on personal health, safety and the work environment;
    - b. The manifestations and behavioral changes that may indicate drug and alcohol use or abuse;
    - c. Documentation of training given to employees and supervisory personnel;
    - d. Documentation that drug and alcohol training for all covered employees has consisted of at least 60 minutes;
    - e. Documentation that drug training for all supervisory personnel has consisted of at least 60 minutes;

- f. Documentation that alcohol training for all supervisory personnel has consisted of at least 60 minutes.
11. Ensure the establishment of clearly defined communication procedures to include the method (e.g. mail, facsimile) and frequency (e.g. monthly, daily, weekly) as well as the authorized individuals to impart and receive information to meet the documentation and confidentiality requirements of the Omnibus Act;
12. Ensure employee organizations receive written notice of the availability of all pertinent drug and alcohol misuse prevention program information.

### **Pre-Employment Testing**

The district shall conduct pre-employment testing as follows:

1. All offers of employment for positions as identified by Board policy and as required by the Omnibus Act will be contingent upon drug test results;
2. Applicants must provide written consent for the release of any prior employer positive drug and alcohol testing results, any subsequent substance abuse professional (SAP) evaluations, return to duty tests and record of any refusal to be tested within the preceding two years;
3. The district shall obtain and review such drug and alcohol information from previous employers of the past two years no later than 14 calendar days before the driver is used for the first time. The district will provide the driver's written release of information to the previous employers;
4. Release of such information may be by telephone, letters or any other method that ensures confidentiality. The district will maintain a written, confidential record of each past employer contacted;
5. The district will not use a driver with positive tests from previous employers prohibiting performance of safety-sensitive functions or refusal to test unless the driver is in compliance with SAP and return-to-duty requirements;
6. Prior to being directed by the district to a collection site for drug and alcohol testing, the applicant will be notified that the urine sample collected shall be tested for the presence of drugs and the breath or saliva sample shall be tested for the presence of alcohol;
7. Failure to report to the collection site for testing within the time frame specified by the district shall constitute a refusal to report for testing and result in immediate termination of employment or transfer consideration;
8. The cost of the drug and alcohol testing shall be paid by the candidate and reimbursed by the district upon receipt of negative drug test results. The district will not reimburse individuals who test positive for drugs;

9. Tests must indicate negative drug test results and a breath alcohol content level below a 0.02. Individuals who fail to meet such drug and alcohol requirements will not be hired or transferred voluntarily or involuntarily to covered positions by the district;
10. Such testing will also be required of covered employees each time an employee returns to work after a layoff period if the employee was removed from the random testing pool. As long as the employee remains in the random testing pool, additional testing will not be necessary following a layoff;
11. The district will notify applicants of the results of the drug testing upon request within 60 days of being notified of the disposition of the employment application;
12. Refusal to submit to drug and alcohol testing and/or to provide for the release of information as required by the district shall result in immediate termination from employment consideration;
13. The applicant may request a re-test of the urine sample at his/her own expense. All such requests must be received in writing by the district no later than five working days following notification to the applicant of the positive test results. Re-tests will be conducted at a site selected by the district;
14. The district will not provide exceptions to pre-employment drug testing requirements. Exceptions, as may be permitted by the Board, will be in accordance with rules established by the Omnibus Act.

### **Post-Accident Testing**

The district shall conduct post-accident testing as follows:

1. It is the responsibility of the employee to report for post-accident drug and alcohol testing as soon as practicable following an accident which occurs while the employee is performing district safety sensitive functions in which any person involved has been fatally injured or the employee receives a citation for a moving traffic violation in connection with an injury or tow-away accident:
  - a. The employee will report to the designated collection site for post-accident drug and alcohol testing as soon as practicable following the occurrence of the accident;
  - b. If alcohol testing has not been administered within two hours, the district will prepare and maintain on file a record stating the reasons the test was not promptly administered;
  - c. If alcohol testing is not administered within eight hours, the district will cease attempts to administer an alcohol test and will prepare and maintain on file a record specifying why the test was not administered;
  - d. If drug testing has not been administered within 32 hours following the accident, the district will cease attempts to administer such tests and will document why the test was not administered;
  - e. The employee will inform the district official or designee as soon as practicable following the accident.
2. The district will provide employees with necessary post-accident testing information, procedures and instructions as a part of its employee training program. Additionally, written instructions to follow in the event of an accident will be provided in district vehicles as appropriate. Instructions will

include locations of drug specimen collection and alcohol testing sites and telephone numbers of district drug and alcohol misuse prevention program coordinator or other district officials to contact;

3. The employee shall remain readily available for testing or may be deemed by the district to have refused to submit to testing. Such refusal is treated as if the district received an alcohol test result of 0.04 or greater or received a positive drug test. Nothing in this requirement shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident or to obtain necessary emergency medical care;
4. Results of a breath or blood test for the use of alcohol or a urine test for the use of drugs conducted by on-site federal, state and/or local law enforcement officials having independent authority for the test shall be considered to meet necessary requirements provided results of the test are obtained by the district and the tests conform to all applicable federal, state and/or local requirements;
5. An employee who has actual knowledge of an accident in which his/her performance has not been discounted as a contributing factor is prohibited from using alcohol for eight hours after the accident or until the employee undergoes a post-accident alcohol test, whichever occurs first.

### **Random Testing**

The district shall conduct random drug and alcohol testing annually as follows:

1. Not less than 50 % of the average number of driver positions shall be tested for drugs and not less than 10 % shall be tested for alcohol in accordance with current minimum random testing requirements of the Omnibus Act. Any unfilled covered positions will be included as part of the total number of positions counted by the district for testing rate purposes;

The district will meet minimum testing rates;

2. The testing rate may be adjusted by the Federal Highway Administration based on industry wide data;
3. The testing process shall, in fact, be random. All employees will remain in the pool of drivers for each subsequent period, including vacations, holiday periods and summer recesses whether or not they have been chosen for testing in the past;
4. The selection of employees for random testing shall be made by a scientifically valid method. The process selected by the district will ensure that all employees shall have an equal chance of being tested each time selections are made. The district will use the following system:

a. Computerized system<sup>1</sup>:

A random number generating program will be loaded into a computer along with the names, employee's social security number, payroll identification number or other comparable identification numbers for the drivers.

OR

b. Manual system:

- (1) Individual, identically sized slips of paper or cards with the names or identification numbers of the covered drivers will be used;
- (2) Cards will be placed into a container from which the required number will be drawn;
- (3) The individual selected by the district to do the drawing will be unbiased;
- (4) All names in the pool will be checked prior to the drawing to assure any necessary additions or deletions are made.

5. All such testing shall be unannounced and dates selected spread reasonably throughout the calendar year to avoid predictability and the perception that testing is "done for the year".
6. Following notification of testing, selected employees shall proceed to the district selected collection site immediately or as soon as practicable;
7. Employees shall only be tested for alcohol just before the driver is scheduled to perform his/her safety-sensitive function, during or just after performing such function;
8. Employees off work due to leaves, vacation and layoffs will be informed that they remain subject to random testing. Employees drawn for such testing will be notified and tested as soon as practicable upon return to duty.

### **Reasonable Suspicion Testing**

The district shall conduct reasonable suspicion drug and alcohol testing as follows:

1. The district will test covered employees whenever there is reasonable suspicion to believe that the employee has engaged in drug use or alcohol misuse;
2. Reasonable suspicion will be based on specific contemporaneous, articulable observations made by a trained supervisor as designated by the district, concerning appearance, behavior, speech or body odors indicative of employee use of drugs or the misuse of alcohol. Observations of drug use may include indications of chronic and withdrawal effects of drugs and noticeable degradation of job performance that may be associated with the use of drugs;
3. Hearsay or second hand information is not sufficient to require an employee to submit to testing;

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<sup>1</sup>The computerized system, when it can be utilized by the district, is the preferred selection method, under FMCSA guidance.

4. Alcohol testing may be authorized only if observations resulting in reasonable suspicion are made during, just preceding or just after the period of the work day that the employee is required to be in compliance with this policy, administrative regulations and the provisions of the Omnibus Act. The observing supervisor is generally prohibited from performing the alcohol test on the employee;
5. If alcohol testing is not administered within two hours, the district will prepare and maintain on file a record stating the reasons the test was not promptly administered;
6. If alcohol testing is not administered within eight hours, the district will cease attempts to administer an alcohol test and will prepare and maintain a record specifying why the test was not administered;
7. A written record shall be made of the observations leading to a reasonable suspicion drug test and signed by the supervisor] authorized to make such observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier;
8. The district will ensure that the employee under reasonable suspicion is transported to the designated collection or testing site.

### **Referrals, Evaluation and Treatment**

The district shall provide information related to referrals, evaluation and treatment as follows:

1. The district shall advise covered employees, who violate the drug and alcohol prohibitions, of referral services available for evaluating and resolving problems associated with the use of drugs and the misuse of alcohol. Such information will include the names, addresses and telephone numbers of substance abuse professional's (SAP's) and counseling and treatment programs;
2. An employee who engages in such prohibited conduct shall be evaluated by a SAP;
3. The SAP will determine what assistance if any the employee needs in resolving problems associated with drug use and alcohol misuse;
4. This requirement applies only to current employees and not to job applicants who refuse testing or who test positive for drugs and/or alcohol;
5. This requirement shall not be interpreted to require the district to provide or pay for any rehabilitation costs or to hold a job open for an employee with or without salary;
6. SAP's, as referred to in these administrative regulations, means:
  - a. Licensed physicians with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders;
  - b. Licensed or certified psychologists, social workers or employee assistance professionals with like knowledge; and
  - c. Alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors ("NAADAC"). This does not include state-certified counselors.

## **Return to Duty Testing**

Employees, if they continue employment and return to duty, shall comply with the following:

1. Whenever an employee has previously tested greater than or equal to 0.04 for alcohol misuse, the employee must test with an alcohol concentration of less than 0.02;
2. Whenever an employee has previously tested positive for drug use, the employee must test with a verified negative test result.

## **Follow-up Testing**

Employees, if they continue employment, shall comply with the following:

1. Follow-up testing will be conducted whenever a SAP determines that an employee is in need of resolving problems associated with drug use and/or alcohol misuse;
2. Follow-up alcohol testing will be conducted only when the employee is performing safety sensitive functions, just before or just after the driver has performed safety sensitive functions;
3. Follow-up drug and alcohol testing will be unannounced<sup>2</sup>;
4. The number and frequency of such tests shall be determined by the SAP. Minimally, there shall be:
  - a. At least six tests in the first 12 months following the driver's return to duty;
  - b. Testing shall not exceed 60 months from the date of the employee's return to duty. The SAP, however, may terminate the follow-up testing at any time after the first six tests if he/she determines the testing is no longer needed.

## **Drug and Alcohol Testing Procedures**

The district, in cooperation with contracted collection and testing facilities shall maintain drug and alcohol testing procedures as follows:

1. Drugs
  - a. The applicant or employee reports to the district designated collection site and provides positive identification;
  - b. A urine sample for drug testing is provided. A "split sample" (second urine specimen bottle) is collected;
  - c. Following completion of a chain of custody form, both specimen bottles are forwarded to the Department of Health and Human Services (DHHS) certified laboratory for analysis. The second specimen is stored at the laboratory for later testing as may be necessary. Initial testing is performed only on one specimen bottle;

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<sup>2</sup>A follow-up test shall not also serve as a random test, and vice versa.

- d. Testing results are reported to the district-selected medical review officer (MRO) by mail or electronic transmission. Results may not be given over the phone;
- e. The MRO will verify both negative and positive testing results;
- f. The MRO will report the verified negative testing results to the district;
- g. The MRO will report verified positive testing results to the applicant or employee, discuss the type of illegal substance found and determine whether there is any valid medical reason for the positive testing results;
- h. A verified valid medical reason for a positive testing result will be reported as a negative testing result to the district;
- i. If no legitimate medical reason exists for positive testing, the MRO will report verified positive testing and identity of the substance(s) to the district;
- j. The employee or applicant may request within 72 hours of a positive test notice that the second specimen sample be tested. Such re-testing costs will be paid for by the employee;
- k. Unlike the original specimen analyzed for specific levels of controlled substances, the second or split sample is analyzed only for the presence of drugs;
- l. The MRO will report results of the re-testing to the employee and the district;
- m. The MRO will meet all Omnibus Act requirements including review of chain-of custody control form, administrative processing of negative testing results, verification of positive testing results and maintenance of confidentiality requirements as may be applicable;
- n. Detailed drug testing procedures may be obtained by contacting the district's drug and alcohol misuse prevention coordinator or designee.

## 2. Alcohol

- a. The employee reports to the district designated testing site and provides positive identification;
- b. Under the alcohol testing rule, an alcohol test result will be considered positive even if over-the-counter or legally prescribed medication is involved;
- c. All alcohol screening tests will be conducted by:
  - (1) Certified breath alcohol technician using evidential breath testing devices;
  - OR
  - (2) A trained saliva testing technician using non-evidential devices.
- d. Testing may be conducted at a Department of Health and Human Services (DHHS) certified laboratory or other location including mobile facilities equipped for such testing as may meet the requirements of the Omnibus Act;
- e. District supervisors should generally not be used as a breath alcohol or saliva testing technician for covered employees. Under certain circumstances, a properly trained district supervisor may conduct such testing in the absence of another technician;
- f. The applicant or employee submits to breath testing or saliva testing;
- g. If the result of the testing indicates an alcohol concentration rate of 0.02 or greater, a confirmation breath test is administered after at least 15 minutes, but no longer than 30 minutes, after the initial testing. All confirmation tests will be conducted using evidential breath testing devices;
- h. The breath alcohol technician will report any invalid tests in which the initial positive test and the confirmation test do not match, confirmed positive and negative results to the district;

- i. Applicant or employee refusal to sign forms as required shall be considered as refusal to be tested;
- j. The breath alcohol or saliva testing technician will meet all Omnibus Act requirements including such testing procedures, Breath Alcohol Testing form and confidentiality requirements as may be required;
- k. Detailed alcohol testing procedures may be obtained by contacting the district's drug and alcohol misuse prevention program coordinator or designee.

### **Positive Test Result**

When the MRO determines a positive test result is valid, the MRO will report the finding to the Oregon Department of Transportation (ODOT) and the Oregon Department of Education. The person who is the subject of the test results will be notified by ODOT that the person has a right to a hearing to determine whether the test results reported will be placed in the employee's employment driving record.

### **Recordkeeping/Record Reporting**

The district shall maintain records of its drug and alcohol misuse prevention program as follows:

1. Records related to the collection process:
  - a. Documents relating to the random selection process;
  - b. Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol testing;
  - c. Documents generated in connection with decisions on post-accident testing;
  - d. Documents verifying the existence of an explanation of the inability of an employee to provide adequate breath or to provide a urine specimen for testing;
  - e. An annual calendar year report summarizing results of the district's drug and alcohol misuse prevention program will be prepared and maintained when requested by the Federal Highway Administration as part of an inspection, investigation, special study or for statistical purposes. If alcohol testing is provided directly by the district, include the following additional recordkeeping requirements.
  - f. Collection logbooks, if used;
  - g. Calibration documentation for evidential testing devices;
  - h. Documentation of breath alcohol or saliva testing technician training.
2. Records related to a driver's test results, including:
  - a. The district's copy of the alcohol test form, including the test results;
  - b. The district's copy of the controlled substance test chain-of-custody and control form;
  - c. Documents sent by the MRO to the district;
  - d. Documents related to the refusal of any employee to submit to drug and/or alcohol testing;
  - e. Documents presented by a driver to dispute the results of a drug and/or alcohol test administered in connection with the requirements of the Omnibus Act.

3. Records related to evaluations as follows:
  - a. Records pertaining to a determination by a SAP concerning his/her evaluation of a covered employee who tested positive for drugs, or failed an alcohol test or refused to test;
  - b. Records concerning a driver's compliance with recommendations of the substance abuse professional.
  
4. Records related to education and training as follows:
  - a. Materials on drug use awareness and alcohol misuse including a copy of the district's policy and administrative regulations on drug use and alcohol misuse and related information;
  - b. Driver's signed receipt of education materials;
  - c. Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and/or alcohol testing based on reasonable suspicion;
  - d. Certification that any training conducted in compliance with the Omnibus Act meets all pertinent requirements for such training.
  
5. Records related to alcohol and drug testing as follows:
  - a. Agreements with collection site facilities, laboratories, MROs and consortia as applicable;
  - b. Names and positions of officials and their role in the district's drug and alcohol testing program(s);
  - c. Semi annual laboratory statistical summaries of urinalysis as required by the Omnibus Act and as reported by the laboratory. The district will document laboratory failures to provide statistical summaries and any district follow-up efforts to obtain such reports.
  
6. Records will be retained by the district as follows:
  - a. Five years:
    - (1) Records of employee alcohol testing results with results indicating an alcohol concentration of 0.02 or greater;
    - (2) Records of verified positive drug testing results;
    - (3) Documentation of refusals to take required drug and/or alcohol tests;
    - (4) Drug testing custody and control forms;
    - (5) Employee evaluation and referrals;
    - (6) A copy of each annual calendar year report summary;
    - (7) Equipment calibration documentation as applicable.
  
  - b. Two Years:

Records related to the drug and alcohol collection process (except calibration of evidential breath testing devices) and training.

c. One Year:

Records of negative and canceled drug testing results and alcohol test results with a concentration of less than 0.02.

d. Indefinite Period:

Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors and drivers shall be maintained by the district while the individual performs the functions which require training and for two years after ceasing to perform those functions.

7. Records will be maintained in a secure location with controlled access to ensure confidentiality requirements are met as follows:

- a. Drug use and alcohol misuse prevention program records will be maintained at the district office. Records relating to individual employee drug and/or alcohol testing, evaluation and treatment will be maintained separately from the employee's personnel file.
- b. Employees are entitled upon written request to obtain copies;
- c. The district may disclose information in connection with employee benefit proceedings, Department of Transportation agency action against an employee of National Transportation Safety Board safety investigations;
- d. The district shall disclose such information to subsequent employers upon written request from the employee;
- e. The district will provide access to any drug and alcohol collection and/or testing facility maintained by the district.