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4162A - ALCOHOL TESTING PROGRAM FOR CDL HOLDERS AND EMPLOYEES WHO PERFORM SAFETY-SENSITIVE FUNCTIONS

The purpose of the School Corporation's drug-testing program is to institute and maintain a program for achieving the objective of a drug-free work force and to provide a workplace that is free from the illegal and improper manufacture, distribution, dispensing, possession, sale, and use of alcohol and controlled substances. This administrative guideline and Board Policy 4162 provide educational materials to explain the requirements of Federal regulations and the Corporation's policies and procedures to meet these requirements.

The program will assist Commercial Driver's License (CDL) holders, including school bus drivers, and employees who perform safety-sensitive functions (collectively, 'Covered Employees') in understanding and avoiding the perils of illegal drug use and controlled substance abuse. The Corporation will provide a comprehensive drug-free awareness program as an ongoing educational effort to prevent and eliminate illegal drug use and controlled substance abuse. The drug-free awareness program will inform Covered Employees about:

- A. the dangers of illegal drug use and controlled substance abuse;
- B. indicators of probable alcohol misuse and controlled substance abuse;
- C. Board Policy 4122.01 - Drug-Free Workplace, Policy 4161 - Unrequested Leaves of Absence/Fitness for Duty, Policy 4170 - Substance Abuse, and Policy 4170.01 - Employee Assistance Program;
- D. the availability of treatment and counseling for employees who voluntarily seek such assistance;
- E. the sanctions that may be imposed for violations of Policy 4122.01

Definitions

- A. The term 'alcohol' means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- B. The term 'illegal drug' means drugs and controlled substances, the possession or use of which is unlawful, pursuant to Federal, State, and/or local laws and regulations.
- C. The term 'controlled substance' includes any illegal drug and any drug that is being used illegally, such as a prescription drug that was not legally obtained or not used for its intended purposes or in its prescribed quantity. The term does not include

any legally-obtained prescription drug used for its intended purpose in its prescribed quantity unless such use would impair the individual's ability to safely perform safety-sensitive functions. Controlled substances include the following substances:

1. marijuana;
2. cocaine;
3. amphetamines;
4. opioids;
5. phencyclidine (PCP).

D. The term 'controlled substance abuse' includes excessive use of alcohol as well as prescribed drugs not being used for prescribed purposes, in a prescribed manner, or in the prescribed quantity.

E. The term 'safety-sensitive functions' includes all tasks associated with the operation and maintenance of Corporation-owned and/or operated vehicles. This term further includes any period in which an individual is actually performing, ready to perform, or immediately available to perform any safety-sensitive function. 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 individual has been relieved from duty by the employer.
2. All time inspecting equipment as required by the Federal regulations 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 the Federal regulations).
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.
6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

F. The term 'Covered Employee' means all commercial driver license (CDL) holders and regular and substitute bus drivers as well as other staff who operate, inspect, service and condition a commercial motor vehicle (CMV) while on duty, regardless of whether they are required to hold a CDL.

[] This policy also covers other staff members who drive students in or inspect, service, and condition non-CMV Corporation vehicles.

G. Refuse to submit (to an alcohol or controlled substances test) means that the individual:

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the Corporation, consistent with applicable Department of Transportation ('DOT') regulations, after being directed to do so by the Corporation. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a consortium/third party administrator (C/TPA).
2. Fails to remain at the testing site until the testing process is complete. Provided, however, that an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
3. Fails to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, however, that an employee who does not provide a urine specimen because s/he has left the testing site before the testing process commences 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 individual's provision of a specimen.

5. Fails 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.
6. Fails or declines to take a second test the employer or collector has directed the individual to take.
7. Fails to undergo a medical examination or evaluation, as directed by the medical review officer (MRO) as part of the verification process, or as directed by the designated employer representative (DER). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment.
8. Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process).
9. Is reported by the MRO as having a verified adulterated or substituted test result.

REQUIRED BACKGROUND CHECK AND RECORDKEEPING

This section applies only to employees seeking to begin performing safety-sensitive (e.g., school bus driving) duties for the first time for the Corporation, including both new hires and employees transferring into safety-sensitive duties.

The Corporation shall make the following inquiries of employees seeking to begin performing safety-sensitive (e.g., school bus driving) duties for the first time for the Corporation, including both new hires and employees transferring into safety-sensitive duties:

- A. An inquiry to each State where the employee held or holds a motor vehicle operator's license or permit during the preceding three (3) years to obtain his/her motor vehicle record (must occur within thirty (30) days of the date employment begins); and
- B. An investigation of the employee's safety performance history with DOT regulated employers during the preceding three (3) years. This investigation must, at a minimum include the following:
 1. General driver identification and employment verification information;
 2. The data elements specified in the Federal regulations for accidents involving the driver that occurred in the three (3) year period preceding the date of the employment application, including:
 - a. any accidents as defined by 49 C.F.R. 390.5; and
 - b. any accidents the previous employer may wish to provide that are retained pursuant to 49 C.F.R. 390.15(b)(2) or the employer's internal policies for retaining more detailed minor accident information;
 3. Whether the employee had violated the alcohol and controlled substance prohibitions in 49 C.F.R. Part 382, Subpart B or 49 C.F.R. Part 40;
 4. Whether the employee failed to undertake or complete a rehabilitation program prescribed by a substance abuse professional ('SAP') pursuant to 49 C.F.R. 382.605 or to 49 C.F.R. Part 40, Subpart O (if the previous employer does not know this information, the Corporation must obtain documentation of the employee's successful completion of the SAP's referral directly from the employee);
 5. Alcohol tests with a result of 0.04 or higher alcohol concentration;
 6. Verified positive drug tests; and
 7. Refusals to be tested (including verified adulterated or substituted drug test results).

If the individual admits to testing positive or refusing to test, the individual shall not be permitted to perform safety-sensitive functions unless and until the employee documents successful completion of return-to-duty requirements.

All individuals the Corporation seeks to hire as an employee who will perform safety-sensitive functions, including drivers, must provide written consent to allow the Corporation to request the above information from all DOT-regulated employers who have employed the potential employee for any period of time during the previous three (3) years.

The written consent shall be provided to the employers from whom the Corporation requests information. If the individual does not provide written consent to the Corporation, the individual will not be permitted to perform safety-sensitive functions. If the Corporation receives information that the employee has violated a DOT drug and alcohol regulation, the employee shall not be permitted to perform safety-sensitive functions unless the Corporation receives information that the employee has subsequently complied with return-to-duty requirements.

Upon receipt of the requested information, the Corporation shall make efforts to review the information before the employee begins performing safety-sensitive functions. If prior review is not feasible, the Corporation shall review the information as soon as possible. However, if the Corporation has not obtained or documented a good faith effort to obtain the requested information within thirty (30) days of the date on which the individual began performing safety-sensitive functions, the individual shall not be permitted to perform safety-sensitive functions.

Information received pursuant to this section, or the good faith efforts the Corporation made to obtain the information, must be maintained as a written, confidential record for three (3) years from the employee's first performance of safety-sensitive duties.

The Corporation must notify applicants with DOT regulated employment during the preceding three (3) years, via the application form or other written document prior to any hiring decision, that s/he has the following rights regarding the above-referenced investigative information that will be provided to the Corporation:

- A. The right to review information provided by previous employers;
- B. The right to have errors in the information corrected by the previous employer and for that previous employer to re-send the corrected information to the Corporation;
- C. The right to have a rebuttal statement attached to the alleged erroneous information if the previous employer and the applicant cannot agree on the accuracy of the information.

PROHIBITED ACTIVITIES

All CDL holders and employees who perform safety-sensitive functions are required to abide by Board policies related to drugs and alcohol, including observing the following prohibitions. Any violation will lead to disciplinary action, up to and including termination of employment.

A. Alcohol Concentration

No Covered Employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions (e.g. driving a school bus) while having an alcohol concentration of 0.02 or greater. No supervisor, who has actual knowledge or having received a verified positive test result indicating that a Covered Employee has an alcohol concentration of 0.02 or greater, shall permit the driver or employee who performs safety-sensitive functions to perform or continue to perform safety-sensitive functions (e.g., driving a school bus).

B. On Duty Use

No Covered Employee shall consume or possess alcohol while performing safety-sensitive functions (e.g., driving a school bus). No supervisor, having actual knowledge or having received a verified positive test result indicating that a Covered employee who performs safety-sensitive functions (e.g., driving a school bus) is consuming or possessing alcohol while performing safety-sensitive functions, shall permit the Covered Employee to perform or continue to perform safety-sensitive functions. The supervisor shall not wait to receive a written report or result of a split specimen test before removing the Covered Employee who performs safety-sensitive functions from his/her duties.

C. Pre-Duty Use

No Covered Employee who performs safety-sensitive functions shall perform safety-sensitive functions (e.g., driving a school bus) within six (6) hours of using alcohol. No supervisor, having actual knowledge or having received a verified positive test result indicating that a Covered Employee who performs safety-sensitive functions has used alcohol within six (6) hours of performing safety-sensitive functions, shall permit the Covered Employee to perform or continue to perform safety-sensitive functions (e.g., driving a school bus). The supervisor shall not wait to receive a written report or result of a split specimen test before removing the Covered Employee from his/her duties.

D. Use Following an Accident

No Covered Employee who performs safety-sensitive functions required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident, or until the Covered Employee undergoes a post-accident alcohol test, whichever

occurs first.

E. Refusal to Submit

No Covered Employee shall refuse to submit to a pre-employment controlled substances test, a post-accident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, a return-to-duty alcohol or controlled substances test, or a follow-up alcohol or controlled substances tests. No supervisor shall permit a Covered Employee who refuses to submit to such tests to perform or continue to perform safety-sensitive functions(e.g., driving a school bus).

F. Controlled Substances Use

1. No Covered Employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions (e.g., driving a school bus) when the Covered Employee consumes or possesses any controlled substance while on duty or consumes any controlled substance within six (6) hours before reporting to duty, except when the use is pursuant to a prescription issued to the Covered Employee by a licensed medical practitioner who is familiar with the Covered Employee medical history and has advised the Covered Employee that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle or perform safety-sensitive functions.
2. No supervisor, having actual knowledge or having received a verified positive test result indicating that a driver or employee who performs safety-sensitive functions is consuming or possessing a controlled substance while on duty or has consumed any controlled substance within six (6) hours before reporting to duty, shall permit the Covered Employee to perform or continue to perform a safety-sensitive function (e.g., driving a school bus). The supervisor shall not wait to receive a written report or result of a split specimen test before removing the Covered Employee from his/her duties.
3. A supervisor may require a Covered Employee to inform him/her of any therapeutic use drug.

G. Controlled Substance Testing

No Covered Employee shall report for duty, remain on duty or perform a safety-sensitive function if the Covered Employee tests positive or has adulterated or substituted a test specimen for controlled substances. No supervisor having actual knowledge that a Covered Employee has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the Covered Employee to perform or continue to perform safety-sensitive functions (e.g., driving a school bus).

CONSEQUENCES OF PROHIBITED ACTIVITY AND TESTING IRREGULARITIES

A. Removal from Safety-Sensitive Functions

A Covered Employee who participates in any of the prohibited activities enumerated above, who tests positive for drugs or alcohol as explained herein, or who refuses to submit to a test shall be removed immediately from his/her safety-sensitive functions and subject to discipline. Disciplinary action, including termination, also will be imposed on any Covered Employee who:

1. fails to enroll, when requested by the Corporation, in an alcohol or other drug treatment or counseling program and/or fails to adhere to the requirements of the program;
2. is indicted or convicted under any criminal drug statute or alcohol statute for a violation occurring in the workplace or outside the workplace;
3. fails to notify the Corporation of any indictment or conviction under any criminal drug statute or alcohol statute within five (5) days of the event; or
4. does not comply with regulations promulgated under any testing program.

Nothing in this provision shall preclude the Board from imposing discipline, up to and including termination of a Covered Employee's employment.

The Corporation shall remove a driver or employee who performs safety-sensitive functions from the safety-sensitive functions upon initial receipt of a verified positive test result. The Corporation shall not wait to receive a written report of the results of a test.

If a driver or employee who performs safety-sensitive functions is found to have an alcohol concentration of 0.02 – 0.039, s/he shall be prohibited from performing any and all safety-sensitive functions (including driving) until the start of the Covered Employee's next regularly-scheduled shift, but not less than twenty-four (24) hours following the administration of the test. If a Covered Employee is found to have an alcohol concentration of 0.04 or greater, s/he shall immediately be removed from duty and prohibited from performing any and all safety-sensitive functions (including driving) for the period of time specified by a Substance Abuse Professional and unless and until they pass a return-to-duty test.

A driver or employee who performs safety-sensitive functions shall be removed from his/her safety-sensitive functions if the Corporation receives a verified adulterated or substituted test result, or if the driver or employee who performs safety-sensitive functions has otherwise violated the DOT drug and alcohol regulations.

If an MRO informs the Corporation that a positive specimen for a driver or employee who performs safety-sensitive functions is diluted, the Corporation will consider the test as a verified positive test and take appropriate removal action, up to and including termination.

Nothing in these provisions shall preclude the Board from imposing discipline, up to and including termination of a Covered Employee's employment.

B. Return-to-Duty (Safety-Sensitive Positions)

Covered Employees who are removed from performing safety-sensitive functions as a result of this policy but who are not discharged must take and pass a return-to-duty test before returning to performing safety-sensitive functions. The return-to-duty test will not occur until after a Substance Abuse Professional (SAP) has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

C. Recollection and Testing Under Direct Observation

When the Corporation receives a canceled test result when a negative test result is required (e.g., pre-employment, return-to-duty, or follow-up testing), the Covered Employee must provide another specimen immediately.

If the Corporation receives a test result indicating that the urine specimen test of the driver or employee who performs safety-sensitive functions was canceled because it was invalid and that a second collection must take place under direct observation, the Covered Employee must provide a new specimen immediately under direct observation. The Covered Employee will not receive advance notice of this requirement. The Corporation will not attach any other consequences to a finding of an invalid test result.

If an MRO informs the Corporation that a negative specimen for a Covered Employee is diluted, and the MRO directs the Corporation to conduct a recollection under direct observation, the Covered Employee must be ordered to do so immediately. Otherwise, the Covered Employee may be instructed to take another test immediately, but not under direct observation. All Covered Employees must receive similar retesting treatment under the latter option. For any retesting of a diluted specimen ordered, 1) the Covered Employee must be afforded the minimum possible advance notice, 2) the result of the retest must be treated as the test result of record, 3) the Covered Employee must not be ordered to take a subsequent test if the result of the retest is also negative and diluted, unless the MRO directs otherwise, and 4) if the Covered Employee declines to retest, the Corporation shall consider this a refusal to test.

[X] CHOOSE BOTH OR NEITHER OF THE FOLLOWING TWO (2) PARAGRAPHS

[X] In addition to any disciplinary action, the Corporation may, for a first offense, in its sole discretion, refer the Covered Employee to a treatment or counseling program for alcohol or drug abuse. Covered Employees who are referred to such a program by the Corporation must immediately cease any use of alcohol, illegal drugs or controlled substances, must consent to unannounced testing, and must comply with all other conditions of the treatment or counseling program and the disciplinary action imposed by the Corporation. Appropriate Corporation representatives shall determine whether a staff member referred for use of alcohol, illegal drugs, or controlled substance shall be reassigned to another available position.

[X] After successful completion of all program requirements, the Covered Employee will be subject again to the Corporation's testing program which applies to Covered Employees who are applying for employment. The Corporation also may require continued testing for a specific period of time for any Covered Employee who has been referred to an alcohol or drug program by the Corporation.

TESTING FOR ALCOHOL AND CONTROLLED SUBSTANCES

The Corporation has established a testing program in accordance with approved DOT procedures, for alcohol, illegal drugs, and controlled-substances for all Covered Employees and will, in its sole discretion, determine and may at any time change the requirements, extent, and frequency of staff member testing.

General Procedure

- A. The Corporation will afford applicants and Covered Employees the opportunity, prior to testing, to list all prescription and nonprescription drugs and controlled-substances they have used and to explain the circumstances surrounding the use of such drugs and controlled substances. Failure of any applicant or Covered Employee to establish adequately a legal basis for the use of any drug or controlled substance with respect to which s/he tests positive shall constitute a violation of these rules.
- B. Applicants and Covered Employees are subject to testing must, prior to testing, sign an approved form agreeing to the testing, authorizing the release of test results to the Corporation's Medical Review Officer (MRO), and authorizing the disclosure of the results by the MRO to the _____ **[Transportation Supervisor]**, the Superintendent, and/or the Board. The MRO will obtain the results of the analyses and communicate or disclose such results to the parties named above in accordance with the Corporation's policies and procedures and appropriate sections of the negotiated agreement, if any.
- C. The Corporation may use such information in connection with Corporation business and for purposes of employment and disciplinary actions, and may disclose it when required to Government agencies and to others upon valid legal requests.
- D. The procedures that will be used for the testing for alcohol and drug use shall protect the Covered Employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct staff member. The procedures of the entity performing alcohol and drug testing for the Corporation are attached to the guideline.
- E. The Corporation, prior to taking any action, will give all Covered Employees who test positive the opportunity to explain in writing the test reasons for the results. Failure of any staff member to establish adequately a legal basis for the use of any drug or controlled substance with respect to which the staff member tests positive shall constitute a violation of these rules.
- F. The Corporation will establish and maintain any and all additional testing programs and requirements that may be necessary or appropriate to comply with applicable rules and regulations of all Government agencies.

PROCEDURE TO BE USED BY TESTING FACILITY

The procedures used by the Corporation's testing facility are to be provided to Covered Employees along with this guideline and related policy.

[NOTE: Legal counsel strongly recommends keeping the testing facility procedures with these guidelines but not making them part of the guideline itself.]

Pre-Employment Testing

Prior to employment or upon receipt of a CDL if already employed, each Covered Employee shall undergo testing for controlled substances () and alcohol. **[NOTE: Testing for alcohol is optional for pre-employment testing.] ()** If a pre-employment alcohol test result indicates an alcohol content of 0.02 or greater but less than 0.04, the candidate will be retested after a waiting period of twenty-four (24) hours. **[NOTE: Choose the last sentence only if testing for alcohol was chosen.]**

If the results of a pre-employment controlled substance test prove negative and diluted, a retest will be given. A second negative and diluted controlled substance test will be the basis for non-employment.

A pre-employment test for controlled substances will not be required if the Covered Employee has participated in a drug-testing program that meets Federal requirements within the previous thirty (30) days and, while participating in that program, either was tested for controlled substances within the past six (6) months from the date of application to the Corporation or participated in a random controlled substances testing program for the previous twelve (12) months from the date of application. The Covered Employee also must verify that s/he has no record of a violation of drug use during the previous six (6) months. The candidate shall sign Form 4162 F3 authorizing the release of the information from the previous testing to the Corporation.

The [Director of Student Services and Transportation](#) shall contact the alcohol and/or controlled substances testing program(s) in which the Covered Employee participated and obtain the following information:

- A. name and address of the program
- B. verification that the Covered Employee participated in the program

- C. verification that the program conforms to Federal law
- D. verification that the Covered Employee is qualified as described above and has not refused to be tested for alcohol and controlled substances
- E. the date the Covered Employee was last tested for alcohol and/or controlled substances
- F. the results of any tests taken within the previous six (6) months and any other use violations.

Post-Accident Testing

As soon as practicable following an accident involving a Corporation vehicle, the Corporation shall test for alcohol and controlled substances of each surviving Covered Employee:

- A. who was performing safety-sensitive functions with respect to the vehicle if the accident involved the loss of human life; or
- B. who receives a citation within eight (8) hours of the occurrence under State or local law for a moving traffic violation arising from the accident if the accident involved either:
 - 1. injury of any person requiring medical treatment away from the accident scene; or
 - 2. a vehicle had to be towed from the accident scene.

This section does not apply to:

- A. an occurrence involving only boarding or alighting from a stationary motor vehicle; or
- B. an occurrence involving only the loading or unloading of cargo; or
- C. an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle, as defined in the Federal regulations, 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 the Federal regulations.

If an alcohol test is not administered within two (2) hours following the accident, the Corporation shall file a record stating the reasons the test was not promptly administered. If a test is not administered within eight (8) hours following the accident, the test shall not be administered and the record shall indicate the reason why the test was not administered. The record shall be submitted to the Federal Motor Carrier Safety Administration (FMCSA) upon request.

If a test is not administered within thirty-two (32) hours following the accident, the Corporation shall cease attempts to administer the test and file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

A Covered Employee who is subject to post-accident testing shall remain readily available for such testing. A Covered Employee who fails to remain readily available for such testing shall be deemed by the Corporation to have refused to submit to testing. The required testing shall not delay necessary medical attention for injured people following an accident or prohibit a Covered Employee 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 Corporation shall provide each Covered Employee with necessary post-accident information, procedures, and instructions prior to the CDL holder operating a Corporation vehicle or the employee performing safety-sensitive functions.

Random Testing

Each year, ten percent (10%) of the average number of Covered Employees shall be subject to unannounced, random alcohol testing and fifty percent (50%) shall be subject to random drug testing. These numbers are subject to change based on the FMCSA Administrator's decision to increase or decrease the annual percentage rate for alcohol and controlled substances, consistent with the Federal Regulations.

The selection of Covered Employees for random alcohol and controlled substances testing shall be made by a scientifically valid method provided by the Corporation's drug-testing facility. Under the selection process used, each Covered Employee shall have an

equal chance of being tested each time selections are made.

[If the Corporation conducts random testing for alcohol and/or controlled substances through a consortium, the number of Covered Employees to be tested may be calculated for each individual Corporation or may be based on the total number of Covered Employees covered by the consortium.]

The Director of Students Services and Transportation ~~_____~~ **[Transportation Supervisor]** shall ensure that random alcohol and controlled substances tests are unannounced and that the dates for such tests are spread reasonably throughout the calendar year.

Each CDL holder or employee who performs safety-sensitive functions who is notified of selection for random alcohol and/or controlled substances testing shall be relieved of any job responsibilities as soon as safely possible and proceed to a test site immediately.

Reasonable Suspicion

A Covered Employee shall be required to submit to an alcohol or controlled substances test when the Corporation has reasonable suspicion to believe that the individual is under the influence of alcohol or a controlled substance. A Covered Employee shall be tested for alcohol only while the Covered Employee is performing safety-sensitive functions or operating a Corporation vehicle, just before the Covered Employee is to perform safety-sensitive functions or operate a Corporation vehicle, or just after the Covered Employee has ceased performing safety-sensitive functions or operating a Corporation vehicle. The Corporation's determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the Covered Employee. Reasonable suspicion observations may include indications of the chronic and withdrawal effects of controlled substances. The person who determines that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the Covered Employee.

Only supervisors or other Corporation officials who have received not less than sixty (60) minutes of training on alcohol use and not less than an additional sixty (60) minutes of training on controlled substances use shall be able to make determinations regarding whether reasonable suspicion exists for Covered Employees subject to DOT regulations. Reasonable suspicion observations may be made during, just preceding, or just after the period of the work day that the Covered Employee is required to be in compliance with these guidelines.

An alcohol test based on reasonable suspicion shall be conducted within two (2) hours following a finding of reasonable suspicion. If an alcohol test is not performed within two (2) hours, the Corporation shall prepare a record stating the reasons why the test was not promptly administered. All attempts to perform a reasonable suspicion alcohol test must cease if not administered within eight (8) hours, and a record must be made if the test is not administered within eight (8) hours.

If the test results indicate that the Covered Employee is under the influence of or impaired by alcohol, the Corporation shall not permit the individual to continue to operate a Corporation vehicle or perform safety-sensitive functions until an alcohol test is administered and the individual's alcohol concentration measures less than 0.02 or for twenty-four (24) hours after the test.

The Corporation shall file a written record of the observations leading to a controlled substance, reasonable suspicion test, signed by the supervisor or Corporation official who made the observations, within twenty-four (24) hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

Return-to-Duty Testing

The Corporation shall ensure that, before a Covered Employee returns to duty after engaging in prohibited alcohol and/or controlled substance conduct, or after the Covered Employee refuses to submit to a test, s/he submits to an evaluation by a Substance Abuse Professional (SAP), undergoes an education/treatment process, and completes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and a verified negative result for illegal drug use. The return-to-duty alcohol test may not be administered until after the SAP has determined that the driver or employee who performs safety-sensitive functions has successfully completed the SAP's recommendations.

Covered Employees must comply with return-to-duty testing procedures if they have a verified positive drug test result, an alcohol test with a concentration of 0.04 or greater, refuse to test, or otherwise violate DOT drug and alcohol regulations.

Follow-Up Testing

If the Covered Employee is receiving assistance in resolving problems associated with alcohol misuse and/or use of controlled substances from a qualified, substance abuse professional, s/he shall be subject to unannounced follow-up alcohol and/or controlled substances testing as determined by the SAP and consisting of at least six (6) tests within the first twelve (12) months of his/her return to duty and at the Corporation's discretion, less frequently during the next four (4) years. All such tests shall be conducted in accordance with the Federal regulations.

Legal

49 C.F.R. 382.305

49 C.F.R. 382.101 et seq.

49 C.F.R. Part 40