

PERSONNEL SERVICES

Regulation 4871
(Form 4871)

Staff Welfare

Driver Drug Testing

Definitions

For purposes of this Regulation, the following terms are defined:

1. *Alcohol* - the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.
2. *Driver* - any person who operates a commercial motor vehicle (CMV) or is required by the District to hold a commercial drivers license (CDL). *Driver* includes, but is not limited to, full-time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers and independent, owner-operated contractors. For purposes of pre-employment/pre-duty testing, *driver* includes a person applying to the District for a position that involves the driving of a commercial motor vehicle.
3. *Employee* - an individual subject to drug urine and breath alcohol testing. For purposes of pre-employment testing, *employee* includes an applicant for employment.
4. *Medical Review Officer (MRO)* - a licensed physician responsible for receiving laboratory results generated by the District's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant medical information.
5. *Safety-Sensitive Function* - a driver is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, is ready to perform or is immediately available to perform any safety-sensitive function. *Safety-sensitive functions* include the following on-duty functions: all time at a facility waiting to be dispatched; all time inspecting or servicing a commercial motor vehicle; 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 sleeping time); all time loading or unloading a commercial motor vehicle, assisting in 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 spent performing the driver requirements associated with an accident; and all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

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6. *Substance Abuse Professional* - a person who evaluates employees who have violated a Department of Transportation (DOT) drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing and aftercare.

Covered Employees

Those District employees who are subject to the prohibitions and mandatory testing requirements of this regulation include all transportation workers, including, but not limited to, bus drivers and maintenance workers, who:

1. Hold commercial drivers licenses; and
2. Who perform safety-sensitive functions at any time during the course of their employment.

Program Coordinator

The Board designates the District's Manager of Transportation to be the Program Coordinator to ensure that the District's employee alcohol and drug program is implemented in accordance with federal regulations and District policy and regulations. The Coordinator will also be responsible for collecting and maintaining all records required by federal law. The Coordinator's name, address and telephone number will be provided to all covered employees.

Testing Program and Policy Information

Before beginning the testing program authorized by Policy 4871, the District will distribute to all covered employees educational materials that explain the requirements of the federal alcohol and drug testing regulations, and the District's policies and procedures with respect to meeting those requirements. The materials will include all information required by federal law. Each covered employee must sign a receipt indicating that he/she has received these materials prior to the beginning of alcohol and drug testing.

ALCOHOL MISUSE PREVENTION AND TESTING PROGRAM

Prohibitions

1. No driver shall use or possess, and the District shall prohibit a driver from using or possessing, alcohol while on duty or while performing a safety-sensitive function.

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2. No driver shall use, and the District shall not permit a driver to use, alcohol for a minimum of four (4) hours before performing a safety-related function.
3. No driver shall perform, and the District shall not permit a driver to perform, safety-sensitive functions, where the driver is found, through testing conducted in conformity with federal rules, to have an alcohol concentration of 0.04 or greater until the driver has been evaluated by a substance abuse professional, completed any rehabilitation required by the substance abuse professional, and undergoes a return-to-duty test in which the driver tests at less than 0.02 for the presence of alcohol.
4. A driver who tests, through testing conducted in conformity with federal rules, at levels of 0.02 to 0.039 for the presence of alcohol shall be prohibited from performing, and shall be removed by the District from performing, safety-sensitive functions until the start of the driver's next regularly scheduled duty, but not less than 24 hours after the test was administered, and until he/she tests below 0.02.
5. A driver who exhibits behavior and/or the appearance characteristic of alcohol misuse will be prohibited from performing, and will be removed from performing, safety-sensitive functions until the driver tests at less than 0.02 for the presence of alcohol.
6. No driver required by federal law, or independent District policy, to take a post-accident alcohol test shall use alcohol for eight hours following the accident or until the driver undergoes a post-accident alcohol test, whichever comes first.

Administration of Alcohol Tests

Alcohol testing will be conducted through the use of a federally approved evidential breath testing device (EBTD), and by a trained breath alcohol technician (BAT), in accordance with federal regulations. The District will contract with an outside agency or organization to provide alcohol testing in accordance with federal regulations. The contract will provide that the alcohol testing site (1) must afford aural and visual privacy to the person being tested, and (2) must be secured while the testing is taking place.

DRUG MISUSE PREVENTION AND TESTING PROGRAM

Prohibitions

1. The District prohibits the unauthorized use of controlled substances. Illicit use of drugs by safety-sensitive employees is prohibited on or off duty.

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2. No driver shall report for duty or remain on duty, and the District shall prohibit a driver from reporting for duty or remaining on duty, when the driver uses any drug, unless the drug is taken pursuant to the instructions of a physician who has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle.
3. The District may require a driver to notify it or the medical review officer of any therapeutic drug use if the driver tests positive, through testing conducted in conformity with federal law, for any controlled substance.
4. Following a determination through testing conducted in conformity with federal law, that a driver has engaged in prohibited use of drugs, the District will remove the driver from performing safety-sensitive functions and will refer the driver to a substance abuse professional. The District will not permit the driver to return to the performance of safety-sensitive functions until the driver submits a verified negative test result and completes any rehabilitation required by a substance abuse professional.

Administration of Drug Tests

1. Collection Site - The District will contract with an outside agency or organization to serve as a collection site for the collection of urine samples for laboratory drug testing. The District will ensure that collection site personnel follow federally prescribed rules for the collection of urine samples. The District will ensure that the collection site generally ensures aural and visual privacy for the person giving the sample. The collection site person will be required to split the sample into two bottles (the primary specimen and the split specimen). Following completion of a chain of custody form, the collection site person will seal and ship both bottles to a laboratory certified by the Department of Health and Human Services for analysis.
2. Laboratory Analysis - The District will separately contract with a certified laboratory to perform the required drug analysis. If the primary specimen tests negative for drugs, the laboratory will dispose of the split specimen. If the laboratory confirms that the primary specimen tests positive, the laboratory will retain the split specimen to ensure that it remains available for testing.

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3. Medical Review Officer - The District will contract with a Medical Review Officer (MRO) who possesses the qualifications required by federal regulations. The MRO will receive and review all laboratory results generated by the District's drug testing program and will report the results to the District's designee as required by federal regulations. In the event the MRO receives a confirmed positive test result from the laboratory, the MRO will make every reasonable effort to confidentially contact the driver and give him/her the opportunity to provide a legitimate, alternative medical explanation for the positive result. If the MRO is unable to reach the driver directly, the MRO shall, in accordance with federal regulations, contact the District's designee who shall direct the driver to contact the MRO immediately. The District's designee shall inform the employee of the consequences of failing to contact the MRO within the next seventy-two (72) hours. The designated management official shall employ procedures that ensure, to the maximum extent practicable, that the requirement that the employee contact the MRO is held in confidence. If the MRO determines that there is a legitimate alternative medical explanation for the positive result, the MRO will report the drug test as being negative. If the employee expressly declines the opportunity to discuss the test, the MRO may verify the test as positive. If the employee is contacted by the designated employer representative but does not contact the MRO within seventy-two (72) hours, the MRO may verify the test as positive. If neither the MRO nor the designated employer representative has been able to contact the employee within ten (10) days after making all reasonable efforts, the MRO may verify the test as positive. If the MRO verifies the presence of illegal, controlled substances, the MRO shall inform the covered employee that he or she has seventy-two (72) hours to request that the split specimen retained by the laboratory be sent to another certified laboratory for analysis. If the split specimen fails to confirm the presence of illegal, controlled substances, the employee's test will be reported as negative.

REQUIRED TESTS

Pursuant to federal law, the District will require that all covered employees submit to the following tests:

Pre-Employment Testing

1. Before any driver can perform a safety-sensitive function, the driver must take a controlled substances test with a verified negative result.

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2. This testing is required of applicants and of employees transferring to a covered position. Testing for newly hired drivers shall be conducted prior to the employment offer, but in any event before commencing safety-sensitive functions. If an applicant refuses to submit to pre-employment drug testing, the District will remove the applicant from employment consideration.
3. After obtaining an applicant or employee's written consent, the District shall request information regarding the drug and alcohol testing record of employees it is intending to use to perform safety sensitive duties, pursuant to federal regulations.

Post-Accident Testing

1. Pursuant to federal law, all drivers will be required to submit to drug and alcohol testing as soon as practicable after any accident (a) involving the loss of life or (b) after any accident in which the driver receives a citation for a moving violation, if the accident involved either (1) bodily injury to any person who, as a result of the accident, immediately receives medical treatment away from the scene of the accident, or (2) disabling damage to one or more motor vehicles which requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. Pursuant to its independent authority, the District requires all drivers to submit to drug and alcohol testing after any accident in which the driver was performing safety-sensitive functions.
2. All post-accident testing shall be conducted within the federally prescribed time periods. If a test is not conducted within the required time periods, then the District will not require the driver to submit to a test and the Program Coordinator, in accordance with federal regulations, will prepare and maintain on file a report and submit it to the Department of Transportation (DOT) documenting the reason(s) why the test was not promptly given.
3. Prior to performing safety-sensitive functions, all drivers will be instructed on the necessity for post-accident testing and the procedures to be followed for post-accident testing so that the drivers can comply with federal regulations.

Random Testing

1. The District will conduct random, unannounced testing for drugs and alcohol for covered employees. The District's designee will establish a scientifically valid random selection method and will select covered employees using this method at unpredictable dates and frequencies throughout the testing year. Under the selection method, each covered employee will have an equal chance of being selected for each testing date.

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2. Each year, the number of random alcohol tests conducted by the District will equal at least 25% of the average number of covered employees. Each year, the number of random drug tests conducted by the District will equal at least 50% of the average number of covered employees.
3. Random alcohol testing will be conducted just before, during, or just after a covered employee's performance of safety-sensitive duties. Random testing for drugs does not have to be conducted in immediate time proximity to the performance of safety-sensitive functions.
4. Once notified of selection for testing, the covered employee must proceed immediately (or as soon as possible) to the collection site for testing.

Reasonable Suspicion Testing

1. The District will require covered employees to be tested for drugs and/or alcohol when the driver's supervisor and/or other properly trained District officials determine that there is reasonable suspicion to believe that the driver has violated the provisions of this Policy.
2. All determinations that reasonable suspicion exists will be only by trained individuals and will be made solely on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the covered employee. Possession of alcohol, standing alone, will not lead to reasonable suspicion testing.
3. Covered employees will be required to submit to reasonable suspicion testing only if the required observations are made by a trained supervisor or District official during, just preceding, or just after the period of the workday that the covered employee is performing a safety-sensitive function.
4. The District designates the Program Coordinator as the District official who will receive the requisite training to determine whether reasonable suspicion exists to require a drug test and/or an alcohol concentration test.

5. The District designee will be responsible for making and signing a written record of the observations leading to reasonable suspicion testing for drugs and/or alcohol. With respect to drug testing, the District designee will ensure that this written record is completed within twenty four (24) hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

Return-to-Duty Testing

1. When a driver is determined, by testing in conformity with federal regulations, to have an alcohol concentration of 0.04 or greater and/or a verified positive test result for drugs, the District will refer that driver to a substance abuse professional. The substance abuse professional will determine what assistance, if any, the driver needs in resolving problems related to drug or alcohol abuse.
2. Before a driver can return to the performance of safety-sensitive functions, the driver must be evaluated by a substance abuse professional to ensure that he/she has completed any necessary rehabilitation. The driver must also submit the results of (1) an alcohol concentration test showing an alcohol concentration of less than 0.02 and (2) a verified negative drug test.

Follow-Up Testing

1. When a covered employee who has violated prohibited alcohol and/or drug standards returns to the performance of safety-sensitive functions, he/she will be required to submit to follow-up testing.
2. Follow-up tests are unannounced and at least six (6) tests must be conducted in the first 12 months after the employee returns to duty. Follow-up testing may be extended for a period not to exceed 60 months following return to duty.

Refusal to Submit to Testing

1. Federal regulations require covered employees to submit to required testing. When a covered employee refuses to submit to testing, or engages in conduct that obstructs the testing process, the test will be considered to be positive and the driver will, in accordance with federal regulations, be prohibited from performing safety-sensitive functions until all preconditions are satisfied.

2. Refusal to submit or to provide a specimen has the same sanctions under the federal regulations as a positive test. Any employee who fails to provide adequate breath or urine for testing must obtain, as soon as possible after the attempted test, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's inability to provide a sufficient specimen. If the physician determines, in his/her reasonable medical judgment, that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient quantity, the employer's failure shall not be deemed a refusal to take a test. The physician shall provide the District a written statement of the basis for his/her conclusion. If the licensed physician, in his/her reasonable medical judgment, is unable to make such a determination, the employee's failure to provide an adequate specimen shall be regarded as a refusal to take a test and a violation of this Policy.

TEST RESULTS, CONFIDENTIALITY AND RECORD RETENTION

Employee Records

1. All employee testing records are confidential and the District will ensure that all testing records are maintained in a secure location with controlled access. Test results and other confidential information may be released by the laboratory, the breath alcohol technician or the MRO only to designated District officials and/or the substance abuse professional. Any other release of confidential information is only pursuant to federal regulations or with the employee's written consent.
2. Covered employees are entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances, including records of tests and test results.

District Record Keeping and Retention

The District will comply with all federal record keeping and retention requirements. In addition, the Program Coordinator will maintain and compile all required statistics and reports and submit those reports to the necessary federal agencies. The District will notify the Director of the Department of Revenue within ten (10) days of notice that a District driver has failed a drug, alcohol or chemical test administered pursuant to this regulation.

Evaluation, Referral and Rehabilitation

Employees who violate the alcohol and drug misuse rules will be referred to a substance abuse

professional for evaluation and will be advised of the available resources for evaluation and treatment. Any treatment or rehabilitation will be provided in accordance with the health insurance, medical or other benefit plan, or under applicable labor or collective bargaining agreements. The District is not required to provide rehabilitation or pay for treatment. In addition, the District is not required to hold the employee's position or to reinstate the employee to a safety-sensitive position.

Consequences for Violations

Pursuant to federal regulations, the District will remove from the performance of safety-sensitive functions any covered employee determined to have violated the provisions of this Policy and will refer to a substance abuse professional those drivers who, based on testing conducted in conformity with federal regulations, have an alcohol concentration of 0.04 or greater and/or are determined to have a verified positive test result for drugs.

Based on its independent authority, the District reserves the right to impose additional consequences for violation of the provisions of this Regulation, including, but not limited to, placing the covered employee on indefinite unpaid leave or termination.