

## **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION MANDATED DRUG AND ALCOHOL TESTING PROGRAM**

### **Definitions:**

**Accident**, for purposes of this policy, is as an incident involving an employee whose job responsibilities require a commercial driver's license (CDL) in which there is:

- A. A fatality;
- B. The employee received a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved bodily injury to any person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or
- C. The employee received a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved one or more vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

**Adulterated Specimen** contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

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

**Alcohol Concentration** (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test (EBT).

**Alcohol Use** means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

**Breath Alcohol Technician** (BAT) is an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device.

**Canceled or Invalid Test** is a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which procedures otherwise require it to be canceled. A canceled test is neither a positive nor a negative test.

**Chain of Custody** is the procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed.

**Commercial Motor Vehicle** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle 1) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight of 10,000 or more pounds; or 2) has a gross vehicle weight rating of 26,001 or more pounds; or 3) is designed to transport sixteen or more passengers, including the driver; or 4) is of any size used in the transportation of materials found to be hazardous for the purposes of the Hazardous Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.

**Confirmation Test** for alcohol testing means a second test, following a screening test that had a result of 0.02 or greater, which provides quantitative data of alcohol concentration. For controlled substances testing, it means a second analytical procedure to identify the presence of a specific drug or metabolite; the confirmation test must be independent of the screen test and use

a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

**Controlled Substances** means the same as the term “drug” and the district is required to test for marijuana, cocaine, opiates, amphetamines and phencyclidine.

**Designated Employer Representative (DER)** is an employee identified by the district as authorized to receive communications and test results from service agents and who is authorized to take immediate action(s) to remove employees from safety sensitive duties and make required decisions in the testing and evaluation processes. The individual must be an employee of the district.

**Dilute Specimen** is a specimen with creatinine and specific gravity values that are lower than expected for human urine.

**Driver** means any person who is required as part of his or her job responsibilities to possess a valid CDL. For the purpose of pre-employment testing/pre-duty testing only, the term driver includes a prospective employee for a position which requires a valid CDL.

**Evidential Breath Testing Device (EBT)** is a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath for alcohol concentration and placed on NHTSA’s “Conforming Products List of Evidential Breath Testing Devices” (CPL).

**Initial Drug Test** is the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

**Medical Review Officer (MRO)** is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program.

**Reasonable Suspicion** is the belief that the driver has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

Refusal to submit (to an alcohol or controlled substance test) occurs when a driver:

- A. Fails to appear for any test (except a pre-employment test) within a reasonable time as determined by the district consistent with this procedure, after being directed to do so by the district.
- B. Fails to remain at the testing site until the testing process is complete.
- C. Fails to provide a urine specimen for any drug test required by district policy or federal rules.
- D. Fails to permit the observation or monitoring of the provision of the specimen when directly observed collection is required.
- E. Fails to provide a sufficient amount of urine when directed, if it has been determined through a medical evaluation that there was no adequate medical explanation for the failure.
- F. Fails to provide a saliva or breath specimen when required.
- G. Fails to provide a sufficient breath specimen when a physician has determined through a medical evaluation that there is no adequate medical explanation for the failure.
- H. Fails to sign the certification at Step 2 of the Alcohol Testing form during an alcohol screening test.
- I. Fails or declines to take a second test the as employer or collector has directed.

- J. Fails to undergo a medical examination or evaluation as directed by the MRO as part of the verification process, or as directed by the DER.
- K. Fails to cooperate with any part of the testing process (e.g. refuses to empty pockets when so directed by the collector or behaves in a confrontational way that disrupts the collection process)s.
- L. Is reported by the MRO as having a verified adulterated or substituted test result.

**Safety-Sensitive Function** is all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. For school districts the typical safety-sensitive function is operating a school bus or other commercial vehicle. Safety-sensitive functions shall include:

- A. All time at the district waiting to be dispatched.
- B. All time inspecting equipment or otherwise servicing any commercial motor vehicle at any time.
- C. All time spent at the driving controls of a commercial vehicle in operation.
- D. All time in or on a commercial vehicle.
- E. All time repairing, obtaining assistance or remaining in attendance on a disabled vehicle.

**Screening Test** (initial test), in alcohol testing it means an analytical procedure to determine whether a driver may have prohibited concentration of alcohol in his or her system. In controlled substance testing, it means test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

**Split Specimen** is the part of the urine specimen sent to the first laboratory and retained unopened, so that it can be sent to a second laboratory in the event an employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

**Stand-Down** is prohibited by federal regulations and consists of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

**Substance Abuse Professional (SAP)** means a licensed physician (MD or Doctor of Osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

**Third Party Administrator (TPA)/Consortium Administrator** is a service agent that provides or coordinates one or more drug/alcohol testing services to the district.

**Verified Test** is a drug test or validity testing result from a federally certified laboratory that has undergone review and final determination by the MRO.

### **Testing Circumstances, Pre-Employment Testing**

- A. Controlled substance testing is required prior to the first time a driver performs a safety-sensitive function for the district. This includes:

1. Testing prospective employees who have been offered employment in positions requiring possession of a valid CDL; and
  2. Testing current employees reassigned to positions requiring a valid CDL.
- B. No newly hired or transferred driver shall perform safety-sensitive functions unless the employer has received a controlled substances test result from a medical review officer indicating a verified negative test result.
- C. The district shall post in the employment office a statement that drug testing is a part of the district's employment process and that satisfactory completion of such a test is a condition of employment.
1. The notice will be included as part of the application packet.
  2. Individuals transferred to positions which may require drug testing will be notified in writing prior to the transfer.
- D. Candidates and district transfers selected for positions requiring drug testing will be offered the position pending a negative drug screening. This offer may be made verbally and shall be confirmed in writing. The supervisor will inform the prospective driver of the requirement to report for testing within 24 hours and the consequences for failure to do so.
- E. The MRO or designee will provide verbal communication to the DER within 48 hours of confirmed negative drug test results. The MRO will notify the DER immediately upon verification of positive test results. The MRO or designee will provide written test results to the district within three days of verbal notification.
- F. Upon receipt of a negative drug test, the prospective driver may commence safety-sensitive functions.
- G. Upon receipt of a positive drug test result, the prospective employee will be notified that he or she will no longer be considered for employment with the district. Potential transfer drivers with positive drug test results will not be permitted to transfer to a position requiring a CDL. Whether or not they continue in their present assignments with the district, are transferred to positions not requiring a CDL (with or without discipline) or are discharged will depend on the individual circumstances and the application of other policies, laws and the collective bargaining agreement, if any. The district will provide the former applicant or potential transfer with a written list of the resources available for evaluating and resolving problems associated with the use of controlled substances.
- H. The district shall notify a prospective driver of the results of a pre-employment controlled substance test conducted under this policy and procedure if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application.
- I. These provisions will apply to employees not being transferred, but performing safety-sensitive functions for the first time in a position.
- J. Test Results and Consequences: Notification from the MRO of a positive controlled substance test result will be dealt with as indicated in paragraph G 8 of this section.
- K. Exceptions to Pre-employment Test Requirements
1. The district is not required to administer a pre-employment controlled substance test if the following conditions are met:
    - a. The driver has participated in a drug testing program in the previous 30 days; and.

- b. While participating in that program the driver must have either been tested for controlled substances in the previous six months, or participated in a random drug testing program for the previous 12 months; and
  - c. The district ensures that no prior employer of the driver has record of violations of any DOT controlled substance use rule for the driver in the previous 6 months.
2. In order to exercise the exception listed above, the district must first contact the controlled substance testing program(s) in which the driver has participated and obtain the following information before the prospective employee is permitted to perform safety-sensitive functions:
- a. The name(s) and address(s) of the program(s). This would generally be the driver's prior and/or current employer(s).
  - b. Verification that the driver participates or participated in the program.
  - c. Verification that the program conforms to the required procedures set forth in the DOT rules.
  - d. Verification that the driver has not refused to submit to controlled substance test.
  - e. The date the driver was last tested for controlled substances.
  - f. The results of any drug tests administered in the previous six months and any violations of the controlled substance rules.
- L. Pre-employment Investigation of Employees Intended to Perform Safety-Sensitive Duties:
1. The district may obtain from any previous employer of a prospective driver, provided the driver has given his or his written consent, any information concerning the driver's participation in a controlled substances and alcohol testing program. Failure by a prospective driver to provide the district with a release for information that the district is required by federal rules to review will result in any prospective offers of employment being withdrawn.
  2. The district must obtain and review the information listed below from any employer the driver performed safety-sensitive functions for in the previous two years. The information must be obtained and reviewed no later than thirty days after the first time a driver performs safety-sensitive functions. The information obtained must include:
    - a. Alcohol tests in which a breath alcohol concentration of 0.04 or greater was indicated.
    - b. Verified positive drug tests
    - c. Refusals to submit to a required alcohol or controlled substance test, including verified adulterated or substituted drug tests results.
    - d. Other violations of federal drug or alcohol testing rules.
    - e. With respect to any employee who violated a federal drug or alcohol rule, documentation of the employee's successful completion of federal return-to-duty/follow-up testing requirements. If the previous employer does not have this information, the district must seek to obtain the information from the employee.

The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under federal regulations.

If the driver stops performing safety-sensitive functions for the employer before expiration of the thirty day period or before the district has obtained the information listed

above, the district must still obtain the information. For example, if a driver quits after one week of employment and the information has not been obtained, the district must still obtain the information.

3. The district must provide to each of the driver's previous employers of the past two years a written authorization from the driver for release of the required information. The release of information may take the form of personal interviews, telephone interviews, letters, or any other method that ensures confidentiality. The district must maintain a written, confidential record with respect to each past employer contacted.
4. The district may not use a driver to perform safety-sensitive functions if the employer obtains information indicating the driver has tested positive for controlled substances, tested at or above 0.04 evaluated by a SAP, completed any required treatment, passed a return to duty test, and been subject to follow-up testing.

**M. Inquiry of the Prospective Employee:** The district will also ask the prospective employee whether he/she has tested positive or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by the federal rules during the past two years. If the employee admits that he/she had a positive test or a refusal to test, the prospective employee must not be permitted to perform safety-sensitive functions for the district.

### **Testing Circumstances, Random Testing**

The district will participate in the ESD's testing consortium.

- A. **Random Alcohol Testing:** A minimum of ten percent (10%) of the drivers employed by participating districts in the consortium will be randomly selected for alcohol testing annually. (The Federal Motor Carrier Safety Administration (FMCSA) may adjust the percentage required for annual random testing.) Drivers shall only be tested for alcohol while they are performing safety-sensitive functions, immediately prior to performing or immediately after performing safety-sensitive functions. (Example: a transportation supervisor may be in the random selection pool because he or she is required to be on-call to drive and to have a CDL.)
- B. **Random Controlled Substance Testing:** The consortium will annually administer substance abuse tests to a minimum of 50% of the drivers employed by districts participating in the consortium, randomly selected. (The FMCSA may adjust the percentage required for annual random testing.)
- C. **Process:**
  1. The consortium will ensure that random alcohol and substance abuse tests are unannounced and dates for administering the random tests are spread reasonably through the calendar year.
  2. The selection of drivers for random alcohol and controlled substance testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made. Each driver selected for testing shall be tested during the selection period.
  3. The district shall ensure that drivers selected for random alcohol and substance abuse tests proceed immediately to the testing site upon notification of being selected, unless the driver is performing a safety-sensitive function, in which case the driver will cease performing and proceed to testing as soon as possible.

4. In the event a driver who is selected for a random alcohol and/or substance abuse test is absent, the district may keep the original selection confidential until the driver returns, if the driver is expected to be available for testing during the current designated testing period.
5. If a driver's name is removed from the random testing pool for more than thirty days, the pre-employment testing provisions will be applied prior to the driver returning to perform safety-sensitive functions.

### **Testing Circumstances, Reasonable Suspicion**

The district shall require a driver to submit to an alcohol or controlled substance test when the district has reasonable suspicion to believe the driver has violated the alcohol or controlled substances prohibitions of the district's policy and procedure.

- A. **Supervisor Training:** the required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or district official who is trained in accordance with the following requirements:
  1. The district must ensure persons designated to determine whether reasonable suspicion exists to require a driver to undergo alcohol or controlled substances testing receive at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substances use.
  2. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.
- B. Only one supervisor is required to make a reasonable suspicion determination before an alcohol or drug test can be required.
- C. Reasonable Suspicion Alcohol Testing

**Note:** The mere possession of alcohol does not constitute a need for reasonable suspicion testing, which must be based on observations concerning the driver's appearance, behavior, speech or body odor. However, possessing alcohol while on duty or operating a commercial vehicle is a violation of this policy that must result in removal from performance of safety-sensitive functions and may result in discipline, up to and including discharge.

1. Reasonable suspicion alcohol testing is authorized only if the observations are made during, just before, or just after the period of the work day the driver is required to be in compliance.
2. The district's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.
3. The supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test.
4. If a reasonable suspicion alcohol test is not administered within two hours following the observations, the district shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight hours, the district shall cease attempts to administer the test, and shall prepare and maintain the record listed above.
5. If reasonable suspicion exists, the district shall not permit the driver to perform or continue to perform safety-sensitive functions at least until:

- a. An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or
  - b. Twenty-four hours have elapsed following the determination that there is reasonable suspicion to believe that the driver has violated the prohibitions of the policy concerning alcohol misuse.
6. Except as provided above, the district shall not take any action against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. Action will be taken if an alcohol test result of .02 alcohol concentration or greater is obtained.
  7. A written record shall be made of the observations leading to an alcohol test, signed by the supervisor or district official who made the observations.

D. Reasonable Suspicion Controlled Substances Testing:

1. The district's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.
2. The district will remove the driver from safety-sensitive functions at least until the verified test results are reported.
3. A written record shall be made of the observations leading to a controlled substances test, and signed by the supervisor or district official who made the observations within 24 hours of the observations or before the results of the test are released, whichever is earlier.

**Testing circumstances, post-accident testing:**

All employees required to possess a CDL and perform safety-sensitive functions as part of their job responsibilities will be provided with necessary post-accident information, procedures, and instructions prior to commencing job responsibilities.

- A. Driver's Responsibility: As soon as practicable following an accident as defined in this procedure, the driver shall make every attempt to contact his/her supervisor or a district representative.
  1. The driver will be given instructions for obtaining alcohol and substance abuse testing.
  2. A driver who is subject to post-accident testing must remain available for testing, or the district may consider the driver to have refused to submit to testing.
  3. The driver subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he or she submits to an alcohol test, whichever comes first.
- B. District Responsibility:
  1. Upon receiving a report of an accident the district shall test the driver (if surviving) for alcohol and controlled substances as soon as practicable. (Note: A driver who receives a citation under state or local law within eight hours of the accident for a moving traffic violation shall be tested for alcohol. A driver who receives a citation under state or local law within 32 hours of the occurrence for a moving traffic violation arising from the accident shall be tested for controlled substances.

2. The district representative will instruct the driver in obtaining the required drug and alcohol tests.
3. The district will determine if the driver will be placed on paid leave pending the results of the drug test.

C. Post-Accident Alcohol Testing:

1. The driver who is subject to post accident testing shall remain readily available for such testing or may be deemed to have refused to submit to the testing.
2. If the test is not administered within two hours following the accident, the district shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If the test is not administered within eight hours following the accident, the district shall cease attempts to administer the test. The district shall prepare and maintain on file a record stating the reasons the test was not administered.

D. Post-Accident Controlled Substance Testing:

The district must test the driver for controlled substances within 32 hours following an accident. If the district cannot administer the test within 32 hours following an accident, attempts to administer the test shall cease. The district shall prepare and maintain on file a record stating the reasons the test was not promptly administered.

Nothing in this procedure should be construed to require the delay of necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

- E. The results of a breath or blood test for the use of alcohol, or a urine test for the use of controlled substances, conducted by federal, state and/or local officials having independent authority to conduct the test shall be considered to meet the requirements of this procedure, if the results are released to the district.

**Testing circumstances, return-to-duty and follow-up testing:**

If for any reason the district continues to employ a driver who has refused to submit to a required test, has tested positive for alcohol at .04 alcohol concentration or greater, or drugs or has otherwise violated this policy, the district must require return-to-duty and follow-up testing before the driver is returned to the performance of safety-sensitive functions.

A. Return to Duty Testing:

1. The district shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding alcohol misuse, the driver shall undergo a return to duty alcohol test indicating a breath alcohol concentration of less than 0.02.
2. The district shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding controlled substance use, the driver shall undergo a return to duty controlled substances test with a result indicating a verified negative result for controlled substances use.

- B. The driver must also be evaluated by a SAP and participate in any treatment program prescribed. The district must obtain a written assurance from the SAP that the employee has complied with required treatment recommendations.

- C. The testing must be conducted at a facility designated by the district.

D. Follow-up Testing:

1. Following a driver's return to duty a determination by a SAP that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the district shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the SAP.
2. Follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

**Prescription Medications**

No driver may possess any prescription medication or report to work while using any prescription, except when he/she is under a prescribing authority's care and the prescribing authority has advised the driver that the substance does not affect his/her ability to operate a commercial motor vehicle. The use of medication that could affect a driver's safe job performance is prohibited while working. The driver shall report to the district human resources representative (who is responsible for maintaining confidential medical files), the use of any prescribed medication and, without identifying the medication, shall provide a certificate from the driver's prescribing authority that the use of the medication will not impair his/her ability to safely perform his/her duties. If, as a result of testing under this policy, the driver is found to have the presence of controlled substances in the body which is a result of the use of his/her legally prescribed medication that has not been reported, the driver shall be removed from service without pay until it is determined that the use of medication will not impair his/her ability to safely perform assigned duties.

**Alcohol Testing Procedures:**

The district participates in the ESD testing consortium.

- A. Alcohol tests will be administered by trained BATs utilizing EBT devices. The EBT shall have a quality assurance plan developed by the manufacturer.
- B. Alcohol testing will be conducted in a location that affords visual and aural privacy to the individual being tested sufficient to prevent unauthorized persons from seeing or hearing test results.
  1. All necessary equipment, personnel, and materials for breath testing shall be provided at the location where testing is conducted.
  2. In unusual circumstances (e.g. when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a location that does not fully meet the requirements in a. and b. above.
- C. The individual being tested will be required to provide the BAT positive identification such as a photo ID card or identification by an employer representative. The employee may request the BAT to provide positive identification.
- D. The BAT shall explain the testing procedure to the individual and the individual shall be required to sign the Breath Alcohol Testing Form. Failure to do so constitutes a refusal to be tested.
- E. Alcohol Test Results:
  1. The BAT shall show the individual the test results.

2. If the result of the screening test is a breath alcohol concentration of less than 0.02, the BAT shall sign the certification form. The BAT shall transmit the result of less than 0.02 to the district in a confidential manner promptly after the test administration.
3. If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be conducted not less than fifteen nor more than thirty minutes after the completion of the screening test.
  - a. The BAT will explain the procedures for the confirmation test.
  - b. The BAT shall show the individual the confirmation test results.
  - c. The BAT and the individual shall sign the test certification form. If the individual does not sign the certification form, it is not considered a refusal to be tested. The BAT shall note the individual's failure to sign on the certification form.
  - d. The BAT shall immediately transmit the results of the test to the designated district representative.
    - 1) The district will verify the identity of the BAT providing the information.
    - 2) The BAT shall follow the initial transmission by providing to the district the employer's copy of the breath alcohol testing form.

F. Refusal to test and uncompleted tests:

1. Refusal by an employee to complete and initially sign the breath alcohol testing form, to provide an adequate amount of breath or otherwise cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT on the certification form. The testing process shall be terminated and the BAT shall immediately notify the district.
2. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form.

G. If an individual being tested attempts and fails to provide an adequate amount of breath, the district shall direct the individual to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the district concerning the employee's medical ability to provide an adequate amount of breath. If the physician determines a medical condition could have precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. If the physician is unable to make the determination that a medical condition has, or with a high degree of probability could have, prevented the employee from providing an adequate amount of breath, the employee's conduct will be considered a refusal to take the test. The physician shall provide the district a written statement of the basis for his or her conclusion to the employer.

**Alcohol test results and consequences**

- A. Results of alcohol concentrations of less than 0.02 will be reported to the DER as negative. The driver is then clear to perform safety-sensitive job functions.
- B. If the results of the driver's alcohol test indicate an alcohol concentration of 0.02 or greater, but less than 0.04, the driver shall not be permitted to drive until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following the administration of the test pursuant to federal regulations. Other policies or the collective bargaining agree-

ment, if any, may prescribe discipline or other actions for blood alcohol concentrations between 0.02 and 0.04.

- C. Results of alcohol concentration of 0.04 or greater or refusal to be tested:
  - 1. The employee will be removed from performing safety-sensitive functions and terminated from employment with the district.
  - 2. The employee will be provided a written list of resources available for evaluating and resolving problems associated with the misuse of alcohol.

**Drug testing procedures:**

The district participates in the ESD testing consortium.

- A. The district/consortium will test for marijuana, cocaine, opiates, amphetamines, and phencyclidine using the split sample method of urine collection. Under split sample procedures, a driver, whose urine sample has been reported as positive for a controlled substance, or adulterated or substituted specimen, has the option (within 72 hours of being notified by the MRO) of having the other portion of the split sample tested at another laboratory. If the second portion of the sample confirms the original result, then the driver is subject to sanctions provided in this policy. If the second portion produces a negative result, or for any reason the second portion is not available, the test is canceled.
- B. The consortium's designated drug testing laboratory shall be certified under Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs. It shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody security and reporting of results, initial and confirmatory testing and validation of analytical procedures. Quality assurance procedures shall be designed, implemented and reviewed to monitor the conduct of each step of the process of testing for drugs.
- C. The district/consortium shall have one or more designated collection sites or independent medical facilities which have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.
- D. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.
- E. The collection site person shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected.
- F. When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing. If the individual requests, the collection site person shall show his/her identification to the employee.
- G. If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate district representative to obtain guidance on the action to be taken.
- H. The collection site person shall explain the collection process to the individual. The collection site person shall instruct the individual to provide at least 45 ml of urine under the split sample method of collection.

I. Drug Testing Results:

1. The laboratory shall report test results to the district's designated MRO within an average of 5 working days after receipt of the specimen by the laboratory. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test.
2. The MRO shall report to the district whether the test is positive or negative, and may report the drug(s) for which there was a positive test.

J. Positive Drug Test Results:

1. Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual the opportunity to discuss the test result with him or her.
  - a. The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test results.
  - b. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated district management official who shall direct the individual to contact the MRO as soon as possible.
  - c. If, after making all reasonable efforts, the designated management official is unable to contact the employee, the district may place the employee on unpaid leave until the employee is contacted.
2. If an employee is notified of a positive test by the MRO, the individual may request that the MRO direct that the split specimen be tested in a different federal Department of Health and Human Services certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen.
  - a. The MRO shall notify each driver who has a confirmed positive test that the driver has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the driver requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, or adulterated or substituted specimen, the MRO will direct in writing that the laboratory provide the split specimen to another DHHS certified laboratory for analysis.
  - b. The result of the test of the split specimen shall be transmitted by the second laboratory to the MRO.
  - c. The employee will be placed on unpaid leave of absence pending the results of the test of the split specimen.
3. The MRO will report the drug test results as either confirmed, failed to confirm — both tests canceled, or test not performed — both tests canceled. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, the district, and the employee. The district will return the employee to active duty and pay for the period of the leave.
4. The MRO may verify a test as positive without having communicated directly with the employee in the following circumstances:
  - a. The employee expressly declines the opportunity to discuss the test; or
  - b. The district has contacted the employee and instructed the employee to contact the MRO and more than five days have passed since the date the employee was contacted.

5. If the MRO determines that there is legitimate medical explanation for the positive test result, the MRO will report the test result to the district as negative.
  6. Following verification of a positive test result, the MRO shall refer the case to the designated district official empowered to recommend or take administrative action, or both.
- K. Negative Test Results: The duties of the MRO with respect to negative results are purely administrative. The MRO will report negative test results to the employer on the MRO form.

### **Drug Test Results And Consequences**

- A. After receiving the initial report of a verified positive drug test, the district shall immediately remove the employee involved from performing safety-sensitive functions and terminate the driver's employment. Removal of the employee from performing safety-sensitive functions shall not be delayed until the district receives the written report or result of the split specimen test.
- B. After receiving the initial report of verified adulterated or substituted drug test results, the district shall consider this a refusal to test and immediately remove the employee involved from performing safety-sensitive functions and terminate the driver's employment. Removal of an employee from performing safety-sensitive functions shall not be delayed until the district receives the written report or the result of a split specimen test.
- C. If the district receives a test result indicating that the employee's specimen was dilute:
  1. The district will treat a dilute positive test as a verified positive test.
  2. A dilute negative test for current employees requires that their next drug test be collected under direct observation.
  3. A dilute negative result on a pre-employment test requires that the prospective employee be tested again immediately. Direct observation of collection will not be used unless there are other reasons to justify it.

### **Referral, evaluation and treatment:**

When a driver receives a positive alcohol or controlled substances test under this policy or violates the other prohibitions of this policy, the district will provide the driver with information regarding the resources available to the driver for evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances. The district is not required to provide any of these services under this policy. Other district policies and provisions in the collective bargaining agreement, if any, may have application to the provision of services.

### **Test costs and compensation:**

If the district collective bargaining agreement covers testing costs and driver compensation, those provisions take precedence over this procedure.

- A. The district will pay for and compensate drivers for their time for the following alcohol and/or initial controlled substances tests: random, reasonable suspicion and post-accident.
- B. Drivers will be responsible for taking the following alcohol and/or controlled substances tests on their own time and at their own cost: pre-employment (unless a current employee is being transferred to a position requiring a CDL from one that does not, in which case the district will compensate for the employee's time and pay for the test), return-to-duty, and follow-up.

- C. If a driver's initial controlled substances test is positive and the driver requests that the split sample be tested, the second test will be at the employee's expense. If the retest is negative, the district will reimburse the employee for the cost of the split sample test.

**Record Retention And Confidentiality**

- A. The district, the ESD drug and alcohol testing consortium, or the contractor, shall maintain records of its alcohol misuse and controlled substances use prevention programs.
- B. The records shall be maintained in a secure location with controlled access.
- C. All records required in this procedure shall be made available for inspection at the district's principal place of business within two business days after a request has been made by an authorized representative of the FCMSA.
- D. The records will be maintained in accordance with the following schedule:
  - 1. Five Years
    - a. Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater.
    - b. Records of driver verified positive controlled substances test results.
    - c. Documentation of refusals to take required action.
    - d. Calibration documentation.
    - e. Driver evaluation and referrals.
    - f. A copy of each annual calendar year summary required by the FMCSA.
  - 2. Two Years:
    - a. Records related to the alcohol and controlled substances collection process (except calibration of EBTs).
    - b. Records of training.
  - 3. One Year: Records of negative and canceled controlled substances test results and of alcohol test results with a concentration of less than 0.02.
  - 4. Indefinitely: Records related to the education and training of BATs, screening test technicians, supervisors and drivers shall be maintained by the district while the individual performs the functions which require the training and for two years after ceasing to perform those functions.
- E. Types of Records:
  - 1. Records related to the collection process
    - a. Collection logbooks, if used.
    - b. Documents relating to the random selection process.
    - c. Calibration documentation for EBTs.
    - d. Documentation of BAT training.
    - e. Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests.
    - f. Documents generated in connection with decisions to administer post-accident tests.
    - g. Documents verifying the existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing.
    - h. Consolidated annual calendar year summaries as required by the FMCSA.

2. Records related to a driver's test results:
    - a. The employer's copy of the alcohol test form, including the results of the test.
    - b. The employer's copy of the controlled substances test chain of custody and control form.
    - c. Documents sent by the medical review officer to the employer.
    - d. Documents related to the refusal of any driver to submit to an alcohol or controlled substances test administered under this policy and procedure.
  3. Records related to other violations of this policy and procedure.
  4. Records related to evaluations:
    - a. Records pertaining to a determination by a SAP concerning a driver's need for assistance.
    - b. Records concerning a driver's compliance with recommendations of the substance abuse professional.
  5. Records related to education and training:
    - a. Materials on alcohol misuse and controlled substance use awareness, including a copy of the district's policy on alcohol misuse and controlled substance use.
    - b. Documentation of compliance with the requirements of the DOT requiring the district's obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.
    - c. Records of the driver's signed receipt of education materials.
    - d. Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion.
    - e. Certification that supervisor training complies with DOT requirements.
  6. Records relating to drug testing:
    - a. Agreements with collection site facilities, laboratories, medical review officers, and consortia.
    - b. Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s).
    - c. Monthly laboratory statistical summaries of urinalysis required by DOT regulations.
    - d. The district's drug testing policy and procedures.
- F. Reporting of Results in a Management Information System
1. The district or the consortium shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs performed under DOT regulations.
  2. By March 15 of each year, the annual summary covering the previous calendar year will be completed.
  3. If the district is notified, during the month of January, of a request by the FMCSA to report the district's annual calendar year summary information, the district shall prepare and submit the report to the FMCSA by March 15 of that year.
- G. Access to Records

1. Except as required by law or expressly authorized or required in this section, the district shall not release driver information that is contained in records required to be maintained under these procedures.
2. A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests.
  - a. Upon written request, the district shall promptly provide the records requested by the driver.
  - b. The district representative shall document the written request and obtain a written verification the records were received by the driver.
3. The district shall permit access to all facilities utilized in complying with the requirements of this policy and procedures and all related records to the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the district or any of its drivers.
4. Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Release of such information by the employer receiving the information is permitted only in accordance with the terms of the employee's consent.
5. The district shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent, or in connection with legal proceedings.