

SUPERINTENDENT'S REGULATION 5-5.5 ALCOHOL/DRUG TESTING: COVERED EMPLOYEES/OTHERS

Generally

The Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing of safety-sensitive transit industries. The Department of Transportation (DOT) published rules mandating alcohol misuse and anti-drug prevention programs in February 1994.

Applicability

Applicants and covered employees who must be tested are those who are required to have a Commercial Driver's License (CDL) to perform their jobs and include: transportation supervisor, drivers of school and activity buses, bus mechanics, substitute bus drivers and such other drivers assigned safety-sensitive functions as recommended by the division superintendent and approved by the School Board.

Definitions

The definitions of this section are in accordance with Title 49 Parts 382 and 40 of the Code of Federal Regulations, as they pertain to the Omnibus Employee Testing Act of 1991.

Actual knowledge

The School Board's knowledge of a covered employee's alcohol or controlled substance use based on direct observation, information provided by the covered employee's former employer, a traffic violation for driving a CMV while under the influence of alcohol or controlled substances, or a covered employee's admission of controlled substance or alcohol use.

Adulterated specimen

A specimen that 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 screening device (ASD)

A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

Alcohol use

The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication) containing alcohol.

Breath Alcohol Technician (BAT)

A person who instructs and assists covered employees in the alcohol testing process and operates an evidential breath testing device.

Commercial Motor Vehicle (CMV)

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 weight rating of more than 10,000 pounds; or
2. has a gross vehicle weight rating of 26,001 or more pounds; or
3. is designed to transport 16 or more passengers, including the covered employee; or

4. is of any size and is used in the transportation of hazardous materials requiring placards. This includes all school buses and qualifying vehicles in other departments.

Confirmation Test

For alcohol, a confirmation test is a second alcohol test following a screening test, that provides quantitative data of alcohol concentration. For controlled substances, confirmation testing means a second analytical procedure to identify the presence of a specific drug or metabolite. Confirmatory drug testing is independent of the screen test and uses a different technique and chemical principle in order to ensure reliability and accuracy.

Confirmed drug test

Confirmation test result received by an MRO from a laboratory.

Controlled substances

Controlled substances include, but are not limited to: marijuana metabolites, cocaine, amphetamines, opiate metabolites, phencyclidine (PCP), and other substances as from time-to-time are covered by applicable law.

Designated Employer Representative (DER)

An employee authorized by the School Board to take immediate action(s) to remove covered employees from safety-sensitive duties or cause covered employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the School Board.

Drivers

Any person who operates a commercial motor vehicle requiring a commercial driver's license (CDL) or is in a position which requires a CDL as an eligibility criteria because the person must drive or be on call and ready to drive if necessary. This includes, but is not limited to, full-time, part-time, and temporary personnel. In every position requiring a CDL, the driver is either driving or in a state of readiness on call if required to drive. Drivers (also covered employees) are subject to drug and alcohol testing under both federal laws and the School Board's policy.

Drugs

The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

Employee

Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under this policy, the term covered employee has the same meaning as the term "donor" as found on CCF and related guidance materials produced by the Department of Health and Human Services.

Employer

For purposes of administering the requirements of this policy and applicable law the "employer" means the School Board, its officers, representatives, and management personnel.

Evidential Breath Testing Device (EBT)

A device approved by NHTSA for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

HHS

The Department of Health and Human Services or any designee of the Secretary of the Department of Health and Human Services.

Initial validity test

The first test used to determine if a specimen is adulterated, diluted, or substituted.

Invalid drug test

The result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

Medical Review Officer (MRO)

A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program. The MRO is a physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result.

Safety-Sensitive Function

A covered employee is performing a safety-sensitive function whenever he/she is engaged in driving a commercial motor vehicle (CDL required) or working in any employment capacity that could affect the safe operation of the vehicle and the safety and welfare of others. This includes any period in which the covered employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. This also includes loading and unloading, inspecting, and repairing vehicles.

Screening Test

A screening test in alcohol testing is an analytical procedure that determines whether an individual has a prohibited concentration of alcohol in his system (breath or saliva). In controlled substance testing, a screening test is a testing of urine specimens that eliminates "negative" specimens from further testing or identifies a specimen that requires further testing for the presence of drugs.

Split Sample Testing

Split sample testing is the division of the urine specimen in controlled substance testing into two separate containers, the primary specimen used for the screening test and the split specimen used if the covered employee requests a second test after being informed of a verified positive screening test.

Substance Abuse Professional (SAP)

A person who evaluates covered employees who have violated this drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Substituted Specimen

A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Verified Test

A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

Prohibited Conduct

The School Board requires compliance with both the word and intent of the Drug Free Workplace Act, acts of the Virginia General Assembly relating to drug and alcohol use, and federal, state and Virginia Department of Education regulations implementing such legislation.

In accordance with the Omnibus Transportation Employee Testing Act of 1991, 49 USC 31306, a covered employee shall not report or remain on duty or perform a safety-sensitive function:

1. having a blood alcohol level (BAL) of 0.04 or greater;
2. using alcohol when performing a safety-sensitive function;
3. remaining on duty to perform safety-sensitive functions within 24 hours of having a blood alcohol concentration (BAC) of 0.02 or greater but less than 0.04;
4. being on duty or operating a CMV while the covered employee possesses alcohol;
5. reporting for duty to perform a safety-sensitive function within four (4) hours of using any alcohol;
6. using alcohol within eight (8) hours following an accident or prior to undergoing a post-accident alcohol test, whichever comes first;
7. leaving the scene of an accident before tests are conducted except as necessary to obtain medical attention or assistance in responding to the accident; .
8. refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion or follow-up testing requirements;
9. reporting for duty or remaining on duty, requiring the performance of safety-sensitive functions, when the covered employee uses any controlled substance, except when instructed by a physician who has advised the covered employee that the substance does not adversely affect the covered employee's ability to safely operate a CMV. The School Board requires the covered employee to inform the director of transportation of any therapeutic drug use; or
10. reporting for duty or remaining on duty to perform a safety-sensitive function if the covered employee tests positive for controlled substances. This includes reporting or remaining on duty after the MRO has reported test specimens as being adulterated or substituted.

Alcohol

Reporting for Duty: No covered employee shall report for duty or remain on duty while having detectable amounts of alcohol of 0.02 breath alcohol concentration (BAC) or higher in his/her system. The School Board will test for alcohol using an Alcohol Screening Test (ASD) and an evidential breath-testing device (EBT) approved by the National Highway Traffic Safety Administration (NHTSA). As required by applicable law, any supervisor who has actual knowledge that a covered employee has violated this regulation and permits the covered employee to work will be in violation of this regulation.

Testing Procedure: All alcohol testing shall be done by the School Board's contractor or appropriate law enforcement officials in accordance with 49 C.F.R. 40. Upon entering the test location, the covered employee will be asked to provide positive identification with photograph (example--covered employee's license) to the breath alcohol technician (BAT). The covered employee and the BAT will complete the Breath Testing Form distributed at the test site and follow required testing procedures. Testing will be conducted by a breath test using an Evidential Breath Testing Device (EBT), which will record a covered employee's blood alcohol concentration (BAC). During the testing process, the technician will test the equipment to verify the breath testing device is working properly. Providing incomplete information, engaging in conduct that obstructs the testing process or failing to sign the required certification may be

regarded as a refusal to take the alcohol test and may constitute just cause for dismissal from employment. At the completion of the screening test, the results will be shown to the covered employee. If the result of the screening test shows evidence of detectable alcohol concentration, a confirmation test will be performed within specified time limits. If detectable amounts of alcohol of 0.02 BAC or higher are verified in the confirmation test, the covered employee will be in violation of this regulation. An individual with a verified positive confirmation test may not leave the test site without approval from the attending physician or designee.

If a screening or confirmation test cannot be completed, or an event occurs that would invalidate the test, the BAT will conduct a new screening or confirmation test, as applicable. In the event that a covered employee attempts and fails to provide an adequate amount of breath, the covered employee will be subject to disciplinary action. At the conclusion of the testing, copies of the Breath Alcohol Test form will be retained by the testing location, provided to the covered employee, and transmitted in a confidential manner to the human resources specialist.

Controlled Substances

Reporting for Duty

No covered employee shall report for duty or remain on duty having used controlled substances except when the use is authorized as prescribed medicine by an attending licensed physician who has advised the covered employee that the substance does not adversely affect the covered employee's work performance. Any supervisor who has actual knowledge that a covered employee has used an illegal drug and permits the covered employee to work will be in violation of this regulation.

A covered employee's urine test is considered positive when the initial screen test and a confirmation test provide evidence of one or more of the substances prohibited by federal and state law, including but not limited to: cocaine, marijuana, opiates, amphetamines and phencyclidine.

Covered employees taking over-the-counter or prescribed medications shall be responsible for knowing the effects or influence of such prescriptions or over-the-counter drugs that could impair their ability to perform their duties safely. They shall not work when using prescribed or over-the-counter medications that might impair their ability to perform their duties safely.

Testing Procedure

For controlled substances testing, covered employees report to a specified test location where a urine sample is collected and subject to the split sampling testing procedure. If the covered employee is unable to provide the specified quantity of urine, the covered employee will be instructed to drink not more than 24 ounces of fluid and wait up to two hours to provide another sample. If a complete sample still cannot be provided, the Medical Review Officer (MRO) will refer the covered employee for a medical evaluation to determine if the inability to provide a specimen is genuine or constitutes a refusal to test and then report the finding in writing to the human resources specialist.

If the results of the initial test are negative, the testing laboratory will advise the School Board's medical review officer (MRO) that the drug test for the covered employee was negative. No additional tests on the specimen will be done. If the results of the initial test are positive, a second (confirmation) test shall be performed using the same urine sample (split specimen). Strict chain of custody procedures will be followed as the samples are forwarded to the laboratory.

When an MRO has received a confirmed positive, adulterated, substituted, or invalid test result from the laboratory, the MRO must contact the covered employee directly, on a confidential basis to determine whether the covered employee wants to discuss the test result. If the covered employee declines to discuss the confirmed test result the MRO will verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable. The MRO must make efforts to contact the employee in accordance with 49 C.F.R. 40 (G). Should the MRO fail to contact the covered employee, the MRO must

contact the Designated Employee Representative (DER) and instruct the DER to contact the covered employee immediately. The DER shall not inform anyone of his efforts to contact the covered employee. If the DER contacts the covered employee, the DER shall instruct the covered employee to contact the MRO in 72 hours. If, in a 24 hour period, the DER fails to contact the covered employee after a minimum of three attempts, the DER may place the employee on temporary medically unqualified status or medical leave. The DER must document and inform the MRO of failed efforts to contact the covered employee. If all reasonable efforts have failed to contact the covered employee, the MRO will verify the test as positive or as a refusal to test. The verified results will be reported to the School Board and the DER as such.

Split Specimen testing

Upon verification of a positive drug test or a refusal to test because of adulteration or substitution, the MRO will notify the covered employee of his right to request split specimen testing. When the covered employee requests the split specimen, it will be sent from the primary testing lab to a different department of health and human services' certified laboratory. The covered employee must make the request within 72 hours of notification by the MRO. The covered employee is not required to pay for the test from his own funds before the test takes place. If the covered employee refuses to pay at the time the test is to be administered, the School Board must pay for the testing to ensure the testing takes place, and may be reimbursed.

If the covered employee does not contact the MRO within 72 hours as required, the covered employee may present information to the MRO documenting a legitimate explanation for the covered employee's failure to contact the MRO within 72 hours. The MRO may honor the covered employees' request to test the split specimen. The MRO's decision to permit further testing is final. Test results shall be confidential and will be reported from the testing laboratory to the MRO only. After the MRO receives the report, he must report the status of confirmation on the split specimen to the School Board, DER, and the employee. The MRO will also, upon request, report results to the U.S. Department of Transportation

Tests Required

Testing shall be conducted by persons designated by the School Board. In general, the School Board shall pay the cost of required drug and alcohol testing, including screening and confirmation tests for alcohol and primary specimen tests for drugs. The School Board shall not pay if the covered employee's initial testing indicates the need for further examinations or consultation on a problem other than drug or alcohol use. In such case, the covered employee shall pay the cost of the additional tests or examinations.

Pursuant to federal law and its own authority, the School Board shall test covered employees under the following circumstances:

- 1. Preemployment/Preduty Testing** : Prior to the first time a covered employee operates a commercial motor vehicle, the covered employee shall be tested for alcohol and controlled substances and must be found to be in compliance with this regulation. Applicants offered positions requiring CDL's must give written consent to the School Board to contact all previous employers over the past two years to be certain that the applicant's work history was free of substance abuse, alcohol use, positive drug and alcohol test results, and test refusals. Furthermore, applicants offered positions must provide written consent for post accident testing and release of test(s) results to the School Board. Refusal of the appropriate release and consent form equates to a refusal to submit to testing and the offer will be withdrawn. If an employee refuses to take a pre-duty test, this shall constitute a violation of the regulation and shall be a cause for dismissal or removal from safety-sensitive functions. In the event that a former employer's information reveals that the applicant or covered employee has ever tested positive for controlled substances or has shown a BAC level of .04 or higher, the applicant or covered employee cannot be allowed to perform safety-sensitive functions unless there is also evidence that the applicant or covered employee has undergone a substance abuse evaluation and has submitted to a successful "return to duty" test, as described below.

An applicant who tests positive for any tested drug shall forfeit any further consideration of their application. A positive test from a current covered employee shall be cause for dismissal.

2. Post Accident Testing: A covered employee of a commercial motor vehicle who, while on duty, is involved in an accident must be tested for alcohol and controlled substances and found to be in compliance with this regulation. Post-accident testing will be required if:
 - a. there is a fatality;
 - b. one or more persons require medical treatment away from the accident scene;
 - c. one of the vehicles must be towed from the scene; and/or
 - d. the covered employee receives a citation arising from the accident.

Every reasonable effort will be made to administer alcohol tests within two (2) hours of the accident. If a test has not been performed within eight (8) hours following the accident, the efforts to test will stop. Controlled substance testing will stop if not performed within 32 hours following the accident. Supervisors are responsible for providing written documentation to include the amount of time taken between the accident and testing and the reason for the delay any time alcohol/controlled substance testing is not performed within 32 hours. A covered employee who is subject to post-accident testing shall remain readily available at the accident scene for testing following the accident until he/she undergoes testing or he/she will be deemed to have refused to submit to testing. The only exception to this requirement applies when the covered employee leaves temporarily to obtain assistance in responding to the accident or to obtain necessary medical care. Without supervisor approval, a covered employee may not ingest food or drink during the period prior to testing.

Testing conducted by federal, state, or local officials at the scene of the accident having independent authority to conduct tests for alcohol and controlled substances shall meet the requirement for post accident testing. Covered employees will be required to consent to testing by such officials and to release the results of such tests to the School Board.

3. Random Testing - Controlled Substances: Alcohol and controlled substances tests shall be reduced periodically on an unannounced basis throughout the calendar year.

Covered employees shall be randomly identified using a scientifically validated method and notified to report for testing during the work year. Under this selection process, each covered employee shall have an equal chance of being tested each time selections are made. Covered employees identified to be tested shall report directly and immediately to the test site when notified by their supervisor. Otherwise, refusal to or delay in reporting immediately and directly to the test site shall be considered a refusal to test and shall be grounds for dismissal. Covered employees shall be tested just before, during, or just after performing safety-sensitive duties.

4. Random Testing – Alcohol: For random alcohol testing, the minimum annual percentage rate of covered employees tested shall be 25 percent of all the commercial motor vehicle covered employees. This percent may increase or decrease in any given year depending on the violation rate as determined annually for each industry by the Federal Highway Administration (FHWA) in accordance with DOT guidelines.

For random drug testing, the minimum annual percentage rate shall be 50 percent of all the commercial motor vehicle covered employees. If a covered employee is off work due to illness, vacation, leave of absence, layoff, injury, or for any other reason for more than 30 calendar days, his name will be removed from the random pool, and prior to returning to driving, the pre-duty testing provisions of this regulation shall apply.

5. Reasonable Suspicion Testing: Covered employees are subject to testing when the School Board or the administration determines that reasonable suspicion exists that requires the covered employee to undergo alcohol testing or controlled substance testing based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the covered employee. The required observations for alcohol and/or controlled

substances reasonable suspicion testing shall be made by a supervisor who is trained in accordance with the provisions of 49 C.F.R. 382.

Even when no reasonable suspicion test is conducted, no covered employee whose observable behavior gives cause for a reasonable suspicion of drug or alcohol use shall be allowed to perform any safety-sensitive function until either:

- a. 24 hours have elapsed, or
 - b. the covered employee submits to a negative drug test in the case of a suspicion of drug use, or to an alcohol test showing a BAC of less than 0.02.
6. **Return to Duty Testing:** After having been determined to have violated the policy and these regulations with respect either to alcohol or controlled substances, a covered employee will not be allowed to return to work or to perform a safety-sensitive function until the covered employee is tested for alcohol or for controlled substances, as the case may be, with an indication of a BAC of less than 0.02 or a negative result for controlled substances.
 7. **Counseling and Follow-Up Testing:** Any covered employee found to have violated the provisions of the policy with respect to either alcohol or controlled substances and who is not dismissed from employment as a result shall be referred to an alcohol or controlled substance abuse counselor for counseling and treatment, if treatment is deemed necessary. As a condition of returning to work the covered employee shall submit to regular unannounced follow-up testing as determined by the counselor but at a minimum the covered employee shall be tested at least six times during the twelve months following the covered employee's return to duty. All such testing shall be arranged by the covered employee's supervisor, in coordination with the testing contractor.
 8. **Refusal to Submit to Alcohol or Controlled Substance Testing:** Covered employees shall not refuse to submit to pre-duty, post accident, reasonable suspicion, random, or follow-up testing. Refusal to test is defined as: refusal to follow alcohol and drug testing procedures; in alcohol testing, failure to provide an adequate amount of breath without a medical reason; in drug testing, failure to provide sufficient urine without a medical reason; and/or not cooperating with the testing process in a manner that prevents the completion of the test. Any covered employee who refuses to submit to the aforementioned tests shall not perform or continue to perform safety-sensitive functions and will be subject to discipline up to, and including, a dismissal.

Disposition Alcohol Testing

If the confirmation test shows an alcohol concentration of 0.02 or greater but less than 0.04:

1. for job applicants, the hiring process will terminate; and/or
2. covered employees shall not perform safety-sensitive functions until the next scheduled duty period (24 hours), or a retest shows the alcohol concentration has fallen below 0.02.

If the confirmation test shows an alcohol concentration of 0.04 or greater:

1. for job applicants, the hiring process will terminate; and/or
2. covered employees shall not perform a safety-sensitive function until evaluated by the medical review officer (MRO), treated (if required) by a substance abuse professional (SAP), and retested with an alcohol concentration result below 0.02. Failure to achieve the below 0.02 concentration will result in termination of employment in the safety-sensitive position. Work days lost must be taken as sick leave (if available) and leave without pay.

Disposition Drug Testing

If the MRO reports a positive result from the primary specimen:

1. the hiring process will terminate for job applicants; and
2. covered employees must be removed from safety-sensitive duty.

Within 72 hours after being notified of a positive test by the MRO, the covered employee may request the split specimen be sent to another HHS-certified laboratory for analysis. Until such time as the MRO

reports the results of the split specimen testing the covered employee will be assigned other than safety-sensitive duties, required to take sick leave (if available) or placed on leave without pay at his supervisor's discretion. If no such request for a confirmation test is made, employment shall be terminated.

If the MRO reports a positive test of the split specimen, employment shall be terminated.

Retention of Records, Handling of Test Results

The School Board shall be responsible for the retention of personnel records related to the implementation of the testing program, including copies of test results. Records shall be maintained and disclosed only in conformity with 49 C.F.R. Part 382(D). The employer must have the consent of the covered employee prior to release of the covered employee's records. In general, those regulations require that records shall be kept for the following periods of time:

1. One Year: records of negative and canceled tests for drugs, and alcohol tests showing a BAC of less than 0.02.
2. Two Years: records related to the collection process and training.
3. Five Years: records of alcohol tests showing a BAC of 0.02 or higher; records of positive drug tests; documentation of refusal to submit to any test; documentation of calibration of testing devices; records of covered employee education and referrals.

The medical review officer (MRO), after careful review, is to report all results to the employer.

Training

Supervisors of covered employees in positions requiring a CDL and who are also responsible for determining if reasonable suspicion exists will undergo two (2) one-hour training sessions, one each on substance abuse and on alcohol misuse. Training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. The training shall be in accordance with 49 C.F.R. 40.