

Administrative Regulations

Bus Driver Controlled Substance and Alcohol Testing

I. INTRODUCTION

Unless specifically stated otherwise, the terms of these administrative regulations are to implement the Department of Transportation ("DOT") rules and regulations promulgated under the Omnibus Transportation Driver Testing Act of 1991, and to preserve the safety and well-being of the District's drivers and the general public.

A. Safety-Sensitive Function

A safety-sensitive function includes, but is not limited to:

- waiting to be dispatched;
- inspecting equipment or servicing, inspecting or conditioning the vehicle;
- driving;
- supervising, attending a vehicle being loaded or unloaded, or remaining in readiness to operate the vehicle; and
- repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

B. Questions

Should a driver have any question regarding these administrative regulations, he/she should contact _____ [name or title].

C. Effect of Alcohol and Controlled Substance Use

The District shall disseminate information on the effect of alcohol and controlled substance use on an individual's health, work, and personal life; signs and symptoms of an alcohol or controlled substance use problem; and methods of intervention in accordance with District administrative regulations.

II. APPLICABILITY

A. Covered Individuals

Any District driver who drives a commercial vehicle is subject to the terms of these administrative regulations. This includes, but is not limited to:

- full time, regularly employed drivers;

- casual, intermittent or occasional drivers;
- leased drivers and independent, owner-operator contractors

who are either directly employed by or under lease to the District, its agents, officers or representatives, or who operate a commercial motor vehicle at the direction of or with the consent of the District, its agents, officers or representatives.

The terms of these administrative regulations also apply to any individual applying to drive a commercial motor vehicle for the District, its agents, officers or representatives.

B. Covered Vehicles

A "commercial motor vehicle" under the terms of these administrative regulations includes motor vehicles used in commerce to transport passengers or property if the vehicle has a gross vehicle weight rating of 26,001 or more pounds, or if it is designed to transport 16 or more passengers, including the driver.

III. PROHIBITIONS

A. No driver performing any safety-sensitive function shall:

- Report for duty or remain on duty while having an alcohol concentration of 0.04 or greater;
- Be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment;
- Use alcohol while on duty;
- Consume alcohol within four hours prior to performing such functions;
- Refuse to submit to a post-accident, random, reasonable suspicion, return to work or follow-up alcohol or controlled substance test, when required to do so under the terms of these administrative regulations;
- Report for duty or remain on duty when the driver has used any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle; or
- Report for duty or remain on duty if the driver has tested positive for controlled substances.

B. No driver required to take a post-accident alcohol test shall use alcohol for 8 hours following the accident, or until he undergoes a post-accident alcohol test, whichever occurs first.

C. Each driver must inform the District of any therapeutic drug use.

- D. A refusal to be tested includes a driver's refusal to sign the certification in Step 2 on the Breath Alcohol Testing Form; refusal to blow an adequate amount of breath for an alcohol breath test, so long as the refusal is not medically related as determined by a physician; the failure of a driver subject to post-accident testing to make himself readily available; and a refusal to otherwise cooperate with the testing process in a way that prevents the completion of the test.

IV. REQUIRED TESTING

All drivers are subject to the following alcohol and controlled substance tests:

A. Pre-Employment Testing

1. Prior to a driver's first performance of safety-sensitive functions for the District, he/she must undergo testing for controlled substances.
2. If the driver has participated in a controlled substance testing program in accordance with Department of Transportation rules within the previous 30 days, the driver may be excepted from pre-employment testing, provided the District has made all verifications required by law.

B. Post-Accident Testing

1. As soon as practicable following an accident involving a commercial motor vehicle, the District shall test for controlled substances and alcohol of each driver
 - a. who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
 - b. who received a citation under state or local law for a moving traffic violation arising from the accident.
2. If a post-accident alcohol test is not administered within 2 hours following the accident, the District shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within 8 hours following the accident, the District shall cease attempts to administer an alcohol test and shall prepare and maintain a record stating the reasons the test was not administered.
3. If a post-accident controlled substance test is not administered within 32 hours following the accident, the District shall cease attempts to administer a controlled substance test, and shall prepare and maintain on file a record stating the reasons the test was not promptly administered.

4. A driver who is subject to post-accident testing shall remain readily available for such testing or he/she may be deemed by the District to have refused to submit to testing.
5. 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, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to applicable requirements, and that the District obtains the results of the tests.

C. Random Testing

1. The District shall conduct unannounced random alcohol and controlled substance testing during each calendar year. The number of random alcohol tests annually must equal a minimum of 25% of the average number of driver positions. The number of random controlled substance tests annually must equal a minimum of 50% of the average number of driver positions. The dates for such random tests shall be reasonably spread throughout the calendar year. In selecting which individuals will be tested, a scientifically valid random selection process shall be used under which each driver shall have an equal chance of being tested each time the selections are made.
2. Each driver selected for random alcohol and/or controlled substance testing shall proceed to the test site immediately upon notification. If the driver is performing safety-sensitive functions at the time of notification, the driver shall cease to perform the safety-sensitive function and proceed to the testing site as soon as possible.
3. A driver shall only be tested for alcohol while 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.

D. Reasonable Suspicion Testing

1. The District may require a driver to submit to an alcohol and/or controlled substance test when a supervisor or District official has reasonable suspicion to believe that the driver has violated the District's alcohol and/or controlled substances prohibitions. Individuals designated by the District to make reasonable suspicion determinations shall be trained in accordance with 49 C.F.R. § 382.603. Reasonable suspicion 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. An alcohol test shall not be performed by the individual who made the reasonable suspicion determination.

2. Alcohol testing is authorized by this section only if the observations resulting in reasonable suspicion are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with these administrative regulations. If the alcohol test is not administered within two (2) hours following a reasonable suspicion determination, the District must prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If the test is not administered within eight (8) hours following the reasonable suspicion determination, the District shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.
3. Notwithstanding the absence of a reasonable suspicion alcohol test, following a determination of reasonable suspicion, a driver shall not report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, 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 of reasonable suspicion to believe that the driver had violated the prohibitions of these administrative regulations concerning alcohol.
4. The supervisor or District official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of those observations within 24 hours of the observed behavior or before the results of the controlled substances test are released whichever is earlier.

E. Return-To-Duty Testing

A driver who has violated the District's controlled substance and/or alcohol prohibitions shall not return to duty requiring the performance of a safety-sensitive function until he/she is tested for alcohol (if the subject violation involved alcohol), with a result indicating an alcohol concentration of less than 0.02, and/or he/she is tested for controlled substances (if the subject violation involved a controlled substance), with a result indicating a verified negative.

F. Follow-up Testing

1. A driver who violates the District's controlled substance or alcohol prohibitions and is subsequently identified by a substance abuse professional, in accordance with Section VI.C. of these administrative regulations, as needing assistance in resolving a controlled substance or alcohol problem shall be subject to

unannounced follow-up testing as directed by the substance abuse professional. Follow-up testing shall be conducted just before, during or just after the time when the driver is performing safety-sensitive functions. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty, and shall consist of no less than 6 tests in the first 12 months following the driver's return to duty.

2. The District may direct a driver to undergo return-to-duty testing and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular driver.

V. NOTIFICATIONS

- A. The District shall notify a driver of the results of a pre-employment controlled substance test if the driver requests such results within 60 calendar days of being notified of the disposition of the driver's employment application.
- B. The District shall notify a driver of the results of a random, reasonable suspicion and post-accident test for controlled substances if the test results are verified positive. The District shall also inform the driver which controlled substance or substances were verified as positive.
- C. The District shall provide drivers with post-accident information, procedures, and instructions, which include the driver's post-accident controlled substance and alcohol testing obligation, prior to the driver operating a commercial motor vehicle.

VI. CONSEQUENCES OF ADMINISTRATIVE REGULATIONS VIOLATION

A. Alcohol Concentration Greater than 0.02 and Less than 0.04

A driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, shall not perform or continue to perform, nor shall the District permit the driver to perform or continue to perform, safety-sensitive functions for the District, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test. Except as provided in Section VI.F. of these administrative regulations, a driver found to have an alcohol concentration of 0.02 or greater, but less than 0.04, shall be subject to no further action under these administrative regulations.

B. Other Violations of Administrative Regulations

If a driver otherwise violates the prohibitions of these administrative regulations, the driver shall not perform, nor shall the District permit the driver to perform, safety-

sensitive functions, until the driver has been evaluated by a substance abuse professional, completed any rehabilitation required by the substance abuse professional, and tested at less than 0.02 for the presence of alcohol as provided under the terms of these administrative regulations.

C. Evaluation by Substance Abuse Professional

The District shall advise any driver who has engaged in conduct prohibited under these administrative regulations of the names, addresses, and telephone numbers of substance abuse professionals and counselling and treatment programs. The driver shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and controlled substance use.

D. Follow-up Testing

Each driver identified as needing assistance in resolving problems associated with alcohol misuse or substance use shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed, and shall be subject to unannounced follow-up alcohol and/or controlled substance tests following the driver's return to work.

E. Refusal to Submit to Test

The District shall permit no driver who refuses to submit to an alcohol or controlled substance test required under these administrative regulations to perform or continue to perform safety-sensitive functions.

F. Discipline Under Independent Authority

Notwithstanding the provisions and requirements of the Act, the District retains authority independent of the Act and these administrative regulations to discipline drivers who violate any provision of these administrative regulations, up to and including termination, in accordance with the District's discipline policy.

VII. RECORDS

A. Previous Employment

1. A driver shall execute a written authorization for release of the following information from the driver's previous employers, to the District, for the 2 years preceding the driver's application for employment with the District:

- a. Information regarding the driver's alcohol tests resulting in a concentration result of 0.04 or greater;
 - b. Positive controlled substances test results; and
 - c. Refusals to be tested.
2. This information must be received and reviewed by the District no later than 14 days after the driver first performs safety-sensitive functions for the District. If the District does not receive and review this information within 14 calendar days after the first time a driver performs safety-sensitive functions for the District, the driver shall not be permitted to perform safety-sensitive functions.

B. District Record Keeping

In accordance with Department of Transportation rules and regulations, the District shall maintain records concerning its alcohol misuse and controlled substances use prevention programs, including, but not limited to, records concerning each individual driver's use of alcohol or controlled substances, records pertaining to each driver's alcohol or controlled substance tests, and all records received from a driver's previous employers. These records shall be maintained in a secure location with controlled access.

C. Requests for a Driver's Records

1. Upon written request, a driver is entitled to obtain copies of any records pertaining to his/her use of alcohol or controlled substances, or pertaining to his/her alcohol or controlled substance tests. The District shall promptly provide the requested documents to the requesting driver. The driver shall be responsible for the cost of copying those documents specifically requested. The driver's access to such copies shall be contingent upon payment of such costs.
2. Unless otherwise permitted by law and the applicable DOT rules and regulations, the District shall release no records maintained under these administrative regulations to any third party unless specifically requested in writing by the driver to do so. The written request must identify a specific individual to whom the documents shall be released. Disclosure of the records to such third party shall be only as expressly authorized by the terms of the driver's written request.

VIII. TESTING PROCEDURES

All alcohol and controlled substance tests conducted in compliance with the Act and implementing rules and regulations shall be conducted in conformance to the uniform

testing procedures established in Title 49 C.F.R. Part 40, attached as Appendix B. Following is a summary of those procedures.

A. Alcohol

1. Breath Alcohol Technicians (BAT)

A breath alcohol technician (BAT) shall administer alcohol tests with an evidential breath testing device (EBT). Each BAT shall be trained in the principles of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required by the applicable DOT rules and regulations for obtaining a breath sample, and interpreting and recording EBT results.

A driver's supervisor who is BAT-qualified may conduct the alcohol test for that driver only if another BAT is unavailable to perform the test in a timely manner; unless otherwise prohibited by law and/or the rules and regulations.

Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. In order for a test performed in this manner to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT that the officer used for the test.

When performing a breath alcohol test, the BAT shall require the driver being tested to provide positive identification. At the driver's request, the BAT shall provide positive identification to the driver.

2. Location

The District shall conduct alcohol testing 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. All necessary equipment, personnel, and materials for breath testing shall be provided at the location where testing is conducted.

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 provide visual and aural privacy. In such cases the BAT shall provide visual and aural privacy to the extent possible.

3. Documentation

When conducting a breath alcohol test, the District shall use the DOT Breath Alcohol Form (attached hereto as Appendix A). The form shall provide triplicate copies. The

first copy shall be retained by the BAT. The second copy shall be provided to the driver. The third copy shall be transmitted to the District.

In instances where the EBT does not provide a printout, the EBT which is used to perform the screening test shall be accompanied by a log book. The log shall document each test conducted with that EBT. The information collected shall include: test number, date of the test, name of the BAT, location of the test, quantified test result, and initials of the driver taking each test.

4. Screening Test

The BAT shall complete Section One of the Breath Alcohol Testing Form. The driver shall then complete Section Two of the form. If the driver refuses to complete Section Two, signing the certification, such refusal shall be regarded as a refusal to take the test.

If the result of the screening test is less than 0.02, the BAT shall sign and date Section Three of the form, and the driver shall fill out Section Four of the form, and no other testing shall be authorized. The results shall be transmitted in a confidential manner to the District, which shall store the information to ensure confidentiality.

If the result of the screening test is 0.02 or greater, a confirmation test shall be administered. The confirmation test shall be administered by a BAT different from that which administered the screening test.

5. Confirmation Test

The confirmation test shall be conducted within 20 minutes of the completion of the screening test, but in no event earlier than 15 minutes after the completion of the screening test.

A new Breath Alcohol Testing Form shall be initiated. Again, driver's refusal to complete Step 2 of the form shall be regarded as a refusal to take the test.

Prior to administering the test, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is other than 0.00, the BAT shall conduct one more air blank. If the EBT still does not register 0.00, the BAT shall cease using that instrument. The testing may proceed on another instrument.

After administering the test, the BAT shall again conduct an air blank. If the reading is greater than 0.00, the test is invalid. If practicable, the BAT may begin a new test with another instrument. The BAT shall transmit all results to the District in a confidential manner.

B. Controlled Substances

The District shall test for controlled substances by urine analysis. The District shall use the "split sample" method of collecting urine specimens for the purpose of the test. The specimens shall be sealed and forwarded to a laboratory certified by the Department of Health and Human Services (DHHS) along with a chain of custody form in order to ensure the specimens' integrity.

If the result of the primary specimen is positive, the driver may request that the medical review officer (MRO) direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The request shall be honored if the request is made within 72 hours of the driver having been notified of a verified positive test result. The laboratory shall then forward to a different DHHS-certified laboratory, the split specimen bottle with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.

If a driver has not contacted the MRO within 72 hours, the driver may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the driver from timely contacting the MRO. If the MRO concludes that the driver's failure to contact the MRO is legitimate the MRO shall direct that the analysis of the split specimen be performed.

The result of the test of the split specimen shall be transmitted to the MRO. If the test result fails to confirm the presence of the drug(s) or metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test, and report the cancellation and the reasons for it to the DOT, the District, and the driver.

The driver is not authorized to request re-analysis of the primary specimen.

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