

POLICY

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Commercial Driver Controlled Substance
And Alcohol Use Testing
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4219 COMMERCIAL DRIVER'S LICENSE CONTROLLED SUBSTANCE
AND ALCOHOL USE TESTING

The Commission is committed to a safe, efficient, ~~and~~ alcohol and drug-free workplace, that protects the district's students as well as the health and safety of its employees and the general public. The Commission requires all **employees of the Board** ~~drivers~~ performing any safety-sensitive function **are to be** free of drugs and alcohol and will test those employees who operate a commercial motor vehicle in accordance with 49 ~~CFR C.F.R.~~ 382 et seq. and 49 ~~CFR C.F.R.~~ 40 et seq. **For the purpose of this Policy "employee" means a person required to have a Commercial Driver's License (CDL) in the performance of their job responsibilities.** Safety-sensitive functions as defined by 49 ~~CFR C.F.R.~~ 382.107 means **any all** time from the time an **employee driver** begins **to** work or is required to be in readiness to work until the time the **employee driver** is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

1. All time at the terminal, facility, ~~or~~ **other property, or on** any public property, waiting to be dispatched, unless relieved from duty;
2. All time inspecting equipment **as required by Federal law or otherwise inspecting, servicing, or conditioning any commercial motor vehicle, at any time;**
3. All time spent at the driving controls of a commercial motor vehicle in operation;
4. All time, other than driving time, in or upon the commercial **motor** vehicle except **time spent resting** in an area defined as a sleeping berth;
5. All time loading **or and** unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded and unloaded; **and**
6. ~~All time spent performing driver requirements related to accidents; and~~ **All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.**
7. ~~All time repairing, obtaining assistance, or remaining in attendance with the vehicle.~~

The Omnibus Transportation Employee Testing Act of 1991 requires all operators of commercial motor vehicles subject to the **CDL Commercial Drivers License** requirements to be tested for controlled substances and alcohol. Federal regulations of the U.S. Department of Transportation require that **any school bus employee drivers using a CDL** ~~as well as drivers of private carriers~~

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~~of passengers contracted by the Board~~ be required to submit to alcohol and controlled substance testing in accordance with 49 CFR ~~C.F.R. Part~~ 40.

The Board designates the Transportation Coordinator as the Designated Employer Representative (DER) of the Board of Education. The Board may contract with a service agent to provide the testing services as required by Federal law Regulations. **In the event the Board contracts with a service provider for transportation, the Board designee will ensure all transportation contractors comply with the drug and alcohol testing requirements of Policy 4219 pursuant to 49 CFR 382 et seq. and 49 CFR 40 et seq.**

No **employee driver** at any work site will possess, manufacture, use, sell, or distribute any quantity of any controlled substance, lawful or unlawful, which in sufficient quantity could result in impaired performance, with the exception of substances administered by or under the instructions of a physician. No **employee driver** shall perform safety-sensitive functions within four hours after using alcohol and the district will not permit an **employee driver** that used alcohol within four hours of performing safety-sensitive functions to perform such functions if the district has actual knowledge of the use, **in accordance with 49 CFR 392.5.**

Violations

Any violation of this ~~P~~policy may result in discipline, up to and including termination.

Prohibited Substances

The presence of any of the ~~following~~ controlled substances, **listed in 49 CFR 40.87,** in the body, as evidenced by the results of the initial screening and subsequent confirmatory analysis provided in ~~the this P~~policy, is prohibited for any employee assigned to a classification covered by this ~~P~~policy. All cutoff concentrations **shall be in accordance with** ~~are as per~~ 49 CFR ~~C.F.R.~~ 40.87 ~~and are expressed in nanograms per milliliter (ng/mL).~~ **All test results shall be measured against the cutoff concentrations outlined in 49 CFR 40.87.**

Type of Drug or Metabolite Initial Test Confirmation Test

Marijuana metabolites	50	
Delta-9 tetrahydrocanna- Binol-9-carboxylic acid (THC)		15
Cocaine metabolites (Benzoylcegonine)	300	150
Phencyclidine (PCP)	25	25
Amphetamines	1000	

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Amphetamine _____ 500
Methamphetamine _____ 500*

(*Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/mL.)

Opiate metabolites _____ 2000
Codeine _____ 2000
Morphine _____ 2000
6 acetylmorphine (6-AM) _____ 10**

(**Test for 6-AM in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 ng/mL.)

Alcohol _____ .02 or higher _____ .02 or higher

Testing Procedures

All testing for controlled ~~dangerous~~ substances will be conducted in accordance with 49 **CFR C.F.R. Part** 40, Subparts A, B, C, D, E, F, G, H and I. The district will only test for ~~the above stated five~~ drugs or classes of drugs in accordance with 49 **CFR C.F.R. 40.85**. Testing for alcohol will be conducted in accordance with 49 **CFR C.F.R. Part** 40, Subparts J, K, L, M and N.

Definitions

“Alcohol **use**” means the drinking or swallowing of any beverage, liquid mixture or preparation (including medication), containing alcohol.

“**Aliquot**” means a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

“Confirmatory ~~dDrug tFest~~” means a second analytical procedure performed on a ~~urine specimen~~ **an aliquot of the original specimen** to identify and quantify the presence of a specific drug or drug metabolite.

“Confirmed ~~dDrug tFest~~” means a confirmation ~~drug test~~ **result** received by a Medical Review Officer (MRO) from a ~~certified~~ laboratory.

“Controlled substances” means those substances identified in 49 **CFR C.F.R. 40.85**.

“CCF” means the Federal Drug Testing Custody and Control Form.

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“Designated Employer Representative (**DER**)” is an employee of the district authorized to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The ~~Designated Employer Representative (DER)~~ shall receive test results and other communications for the employer, consistent with the requirements of this Policy and 49 ~~CFR~~ ~~C.F.R.~~ 40. Service agents cannot act as a DER.

“FMCSA” means Federal Motor Carrier Safety Administration.

“Initial ~~d~~Drug ~~t~~Test (also known as a “Screening drug test”)” means the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

“Initial ~~specimen v~~Validity test ~~Screening~~” means the first test used to determine if a **urine** specimen is adulterated, diluted, ~~or~~ substituted, **or invalid**.

“Medical Review Officer (**MRO**)” is a licensed physician responsible for receiving and reviewing laboratory results generated by the district’s drug testing program and evaluating medical explanations for certain drug test results.

“Possess” **includes, but is not limited to,** ~~means~~ either in or on the driver’s person, personal effects, motor vehicle, or areas substantially entrusted to the control of the driver.

“Service agent” is any person or entity, other than an employee of the Board, who provides services specified under 49 ~~CFR~~ ~~C.F.R.~~ 40 to the Board.

“Substance Abuse Professional (**SAP**)” is a person who evaluates employees who have violated a **Federal or State** drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. ~~An~~ **Individuals** permitted to act as a **SAP** ~~substance abuse professionals~~ must possess the credentials as outlined in 49 ~~CFR~~ ~~C.F.R.~~ 40.281.

“Work Site” means any motor vehicle, office, building, yard, or other location at which the driver is to perform work; **or any other school district property or at any school district event.**

Categories of Testing

For the purpose of this Policy, the occurrence of the following circumstances/instances shall require an employee to submit to a controlled substance and alcohol screening:

1. Pre-Employment Testing

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An individual who has applied for and has been selected to operate a Board vehicle shall, before beginning employment with the Board, submit to a controlled substance screening in conjunction with any required physical examination as per Policy No. 4160. Such screening shall be conducted in accordance with the procedures set forth in this Policy and 49 CFR C.F.R. 40. No individual receiving a positive confirmed test result will be employed by the Board.

An employer is not required to administer a controlled substances test required by 49 CFR 382.301(a) if exception to the pre-employment screening may be made if the prospective employee:

- a. **The employee** ~~h~~Has participated in a controlled substances testing program that met the requirements of 49 CFR C.F.R. 382 et seq. within the previous thirty days; and
- b. **The employee** while participating in that program either:
 - (1) Was tested for controlled substances within the past six months (from the date of application **with the employer** ~~to the commission~~); or
 - (2) Participated in the random controlled substances testing program for the previous twelve months (from the date of application **with the employer** ~~to the commission~~); and
- c.~~(3)~~ The DER must ensure that no prior employer, to the DER's knowledge, has records of a violation of a controlled substances testing program within the previous six months.

If an individual is so exempted, the ~~Designated Employer Representative (DER)~~ shall contact the ~~alcohol and/or~~ controlled substances testing programs in which the **individual driver** participated and **shall obtain and retain from the testing program(s)** the following information in accordance with 49 CFR C.F.R. 382.301(c):

- a. Name and address of the program;
- b. Verification of the **individual's driver's** participation;
- c. Verification that the program conforms to Federal guidelines;

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- d. Verification the **individual driver** qualified **under the law** and did not refuse to be tested for controlled substances;
- e. The date the **individual driver** was last tested for controlled substances; and
- f. The results of any tests taken within the **previous last** six months and any other violations.

An **employee individual** who has applied for and has been selected to operate a Board vehicle or any existing employee transferring into a new position **requiring the employee** ~~now required~~ to operate a Board vehicle, shall submit a written consent authorizing the ~~commission~~ **Board** to obtain the following information from other employers who have employed the employee during any period during the two years before the date of the **employee's individual's** application ~~date~~ or transfer into the new position. The written consent from the **employee individual** will permit the ~~Designated Employer Representative (DER)~~ to obtain the following information from previous **Division of Transportation (DOT)**-regulated employers:

- a. Alcohol tests with a result of 0.04 or higher alcohol concentration;
- b. Verified positive drug tests;
- c. Refusals to be tested (including verified adulterated or substituted drug test results);
- d. Other violations of DOT agency drug and alcohol testing regulations; and
- e. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If this information is not available from the previous employer, the DER must seek to obtain this information from the **employee individual**.

The DER will obtain and review this information before the employee first performs ~~any driving and/or~~ safety-sensitive functions. If this is not feasible, the DER will not permit the **employee individual** to **perform safety-sensitive functions** ~~work~~ after thirty days from the ~~individual's first date~~ **the employee first performed safety-sensitive functions, of employment in the position** unless the DER has obtained or made and documented a good faith effort to obtain this information.

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2. Random Testing

~~Every A-covered~~ employee shall ~~be subject to~~ submit to **random** alcohol and controlled substance testing on an unannounced and random basis resulting from the selection by a random generation methodology in accordance with 49 **CFR** ~~C.F.R.~~ 383.305(i). Random testing will be spread reasonably throughout any given calendar year.

The minimum annual percentage rate for random alcohol testing shall be **ten percent** ~~10%~~ of the average number of drivers **positions**. The minimum **annual percentage rate** ~~of~~ of random controlled substances testing shall be **twenty-five percent** ~~50%~~ of the average number of drivers **positions**. These **minimum annual percentage** rates may be adjusted as determined by the ~~FHWA (Federal Highway Administration)~~ **FMCSA** Administrator in accordance with 49 **CFR** ~~C.F.R.~~ 382.305.

~~Employees Drivers~~ shall only be random tested when performing safety-sensitive functions or immediately prior to or immediately following the performance of safety-sensitive functions.

3. Post-Accident Testing

The involvement by an employee in a motor vehicle collision while operating a Board vehicle when such accident results in property damage or personal injury, may trigger a post-accident drug and alcohol test.

As soon as practical following an occurrence, the DER will require post-accident alcohol screening for each of the surviving drivers:

- a. Who was performing safety-sensitive functions with respect to a vehicle, if the accident involves the loss of human life; or
- b. Who receives a citation within eight hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (1) Bodily injury to any person, who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (2) One or more motor 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.

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- c. If the alcohol test is not administered within two hours following the accident, the DER will prepare and maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight hours following the accident, the DER shall cease attempts to administer the alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

As soon as possible following an occurrence, the district will require post-accident controlled substance screening for each of the surviving drivers:

- a. Who was performing safety-sensitive functions with respect to a vehicle, if the accident involves the loss of human life; or
- b. Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (1) Bodily injury to any person, who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (2) One or more motor 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.
- c. If the controlled substance test is not administered within thirty-two hours following the accident, the DER shall cease attempts to administer the controlled substance test and shall prepare and maintain **on file a record stating the reasons the test was not promptly administered** ~~the same record~~. Records shall be submitted to the FMCSA upon request.

An employee ~~Drivers~~ who is subject to post-accident testing shall remain readily available for such testing or **may be deemed by the employer** to have refused to submit for testing. (An **employee driver** who is injured in an accident and requires medical care, shall submit to post-accident drug and controlled substance testing by the medical care facility providing the treatment or a designee of the Board if the facility is unable to provide the testing.) Nothing herein shall be construed to prevent the **employee driver** from leaving the scene of the accident for the period required to obtain necessary assistance or to obtain emergency medical care.

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4. Reasonable Suspicion Testing

The DER ~~may~~ **shall** require an **employee driver** to submit to an alcohol and/or controlled substance test when the **employee driver** is observed by a supervisor or school official who is trained in accordance with 49 ~~CFR C.F.R.~~ 382.603 and causes the observer to have reasonable suspicion to believe the **employee driver** has violated 49 ~~CFR C.F.R.~~ 382 et seq. Reasonable suspicion must exist to require the **employee driver** to undergo a test and must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the **employee driver**. The observations may include indications of the chronic and withdrawal effects of controlled substances.

Reasonable suspicion alcohol testing is authorized only if the required observations are made during, just preceding, or just after the period of the work day the **employee driver** is required to be in compliance with the testing requirements of 49 ~~CFR C.F.R.~~ 382 et seq.

Reasonable suspicion testing may be required of an **employee driver** while the **employee driver** is performing, just before the **employee driver** will perform, or just after the **employee driver** has ceased performing safety-sensitive functions.

If the alcohol test is not administered within two hours following the determination a reasonable suspicion test is required, the DER will prepare and maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight hours following the determination, the DER shall cease attempts to administer the alcohol test and shall state in the record the reasons for not administering the test.

No **employee driver** shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the **employee driver** is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse. The **employee driver** will also not be able to perform or continue to perform safety-sensitive functions until an alcohol test is administered and the **employee's driver's** concentration measures less than 0.02 or twenty-four hours have elapsed following the determination that reasonable suspicion existed to require an alcohol test.

A written record of the observations leading to a reasonable suspicion test shall be made and signed by the supervisor and/or school official that made the observations. This record shall be made within twenty-four hours of the observed behavior or before the results of the test are released, whichever is earlier.

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5. Return to Duty Testing

The Commission is not required to return an employee to a safety-sensitive position upon receipt of a confirmed drug and/or alcohol test.

The ~~Designated Employer Representative (DER)~~ may recommend to the Superintendent of Schools the **employee's individual's** employment be terminated depending on the circumstances.

~~In the event the DER does not recommend termination,~~ The DER shall ensure that before an **employee driver** returns to duty requiring the performance of a safety-sensitive function, the **employee driver** shall undergo a return to duty alcohol test indicating a breath alcohol concentration of less than 0.02 and a controlled substances test with a result indicating a verified negative result for controlled substances use as required in 49 ~~CFR C.F.R.~~ 40.305.

Employees Drivers permitted to return to duty are required to take return-to-duty tests and shall be evaluated by a ~~Substance Abuse Professional (SAP)~~. These **employees individuals** must participate in an assistance program prescribed by the SAP and as required in 49 ~~CFR C.F.R.~~ 40 Subpart O.

The SAP will determine a written follow-up testing plan for any **employee individual** who has been permitted to return to work and has successfully complied with the SAP's recommendations for education and/or treatment. Such employees are subject to a minimum of six unannounced, follow-up drug screenings and alcohol tests over the following twelve months. The testing shall not exceed ~~sixty~~ **forty-eight additional** months. Alcohol follow-up testing shall be performed only when the **employee driver** is performing safety-sensitive functions or immediately prior to performing or immediately after performing safety-sensitive functions. All follow-up testing will be completed in accordance with 49 ~~CFR C.F.R.~~ 40.307. The SAP will comply with all reporting requirements of 49 ~~CFR C.F.R.~~ 40.311.

The Board shall make the ultimate determination to return or not return an employee to a safety-sensitive position subject to any collective bargaining agreements, if any, or other legal requirements.

Medical Review Officer (MRO) Notifications

The Board shall employ or contract with a **MRO** ~~medical review officer~~ who is a licensed physician (M.D. or D.O.) and shall designate the **MRO** ~~Medical Review Officer~~ as the individual responsible for receiving laboratory results generated by the testing program. The **MRO** ~~medical review official~~ shall have knowledge of **controlled** substances abuse disorders and have

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appropriate medical training to interpret and evaluate the **employee's** ~~individuals~~ confirmed **drug test results** ~~positive test~~ together with his/her medical history and other biomedical data. The ~~MRO Medical Review Officer~~ will perform all functions and responsibilities as required in ~~49 CFR C.F.R. 49 40.121 Subpart G.~~

Employer Notification

The ~~MRO Medical Review Officer~~ may report controlled substances test results to the DER by any means of communication; however, a signed, written notification must be forwarded within three business days of the completion of the ~~MRO's Medical Review Officer's~~ evaluation. The ~~MRO Medical Review Officer~~ must report all drug test results to the employer. The MRO may use a signed or stamped and dated legible photocopy of Copy 2 of the CCF to report test results or a written report that must include, at a minimum, the information required in ~~49 CFR C.F.R. 40.163.~~

Split Specimen Tests

Split specimen testing will be conducted in accordance with ~~49 CFR C.F.R. 40 Subpart H.~~ **The MRO will notify the Superintendent of Schools or designee if split specimen testing is requested by the employee.** ~~Under split sample collection procedures, the driver has seventy-two hours from the time of notification of a positive result to request the MRO to order a test of the split specimen. If the driver does not request a split specimen test within seventy-two hours, the driver may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, or other circumstances unavoidably prevented the individual from making a timely request.~~

~~If the split specimen is unavailable or appears insufficient, the laboratory will continue the testing process of the primary specimen as the laboratory would normally. The laboratory will report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen. In the event the MRO requests the split specimen be forwarded to another laboratory, the laboratory will report to the MRO the split specimen is unavailable for testing and the laboratory will provide the MRO with as much information as possible about the cause of the unavailability.~~

Designated Collection Facility

The Commission shall designate the facility to be used for the collection of the specimen; provided, however, that the designated facility shall possess all required licenses and permits. The collection site will take place in a facility meeting the requirements of ~~49 CFR C.F.R. 40 Subpart D.~~ The DER will ensure the collection site meets the security requirements of ~~49 CFR C.F.R. 40.43.~~

Designated Screening Laboratory

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The Commission shall designate the laboratory to which collected fluid samples will be forwarded for drug/alcohol screening. Drug testing laboratories must be certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program (NLCP) for all testing required under 49 ~~CFR C.F.R.~~ 40. The laboratory will perform all responsibilities as required in accordance with 49 ~~CFR C.F.R.~~ 40 Subpart F.

Specimens

The normal screening methodology for controlled substances shall be urinalysis, collected by a **trained** representative of the Board **with appropriate documentation** at a **site designated and approved by the Board** ~~designated site~~. The presence of alcohol will be determined by an Alcohol Screening Device (ASD) or an Evidential Breath Testing Device administered by an individual certified in accordance with 49 ~~CFR C.F.R.~~ 40.211 and 49 ~~CFR C.F.R.~~ 40.213.

Refusal to Submit

An ~~employee driver~~ **employee** will be deemed as refusing to take a drug test as described in 49 ~~CFR C.F.R.~~ 40.191. As per 49 ~~CFR C.F.R.~~ 40.191, an ~~employee individual~~ **employee** refuses to take a drug test if he/she:

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the DER, consistent with applicable DOT agency regulations, after being directed to do so by the DER;
2. Fails to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
3. Fails to provide a urine specimen for any drug test required by this ~~P~~**policy**. An employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
4. Fails to permit the observation or monitoring of providing a specimen in the case of a directly observed or monitored collection in a drug test;
5. Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6. Fails or declines to take an **additional drug** ~~second~~ test the DER or collector has directed the ~~employee individual~~ **employee** to take;

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7. 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 under ~~See~~ **49 CFR 40.193(d)**. In the case of a pre-employment drug test, the **employee individual** is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
8. Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, **fails to wash hands after being directed to do so by the collector**); ~~or~~
- ~~9. If the MRO reports the driver had a verified adulterated or substituted test result.~~
- 9. Fails to follow the collection observer(s) instructions of which could be used to interfere with the collection process;**
- 10. Possesses or wears a prosthetic or other device that could be used to interfere with the collection process; or**
- 11. Admits to the collector or MRO he/she has adulterated or substituted the specimen.**

If the MRO reports the employee had a verified adulterated or substituted test result, the result will be deemed refusal to take a drug test.

If an **employee individual** refuses to participate in a part of the testing process, the collector or MRO, must terminate the portion of the testing process, document the refusal on the CCF (including in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. A referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation) must notify the MRO, who in turn will notify the DER. In addition, the collector must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF. The MRO must note the refusal by checking the "~~R~~refused to ~~T~~test ~~because~~" box (Step 6) on Copy 2 of the CCF, and add the reason on the "Remarks" line. The MRO must then sign and date the CCF. When the **employee driver** refuses to take a non-DOT test or to sign a non-DOT form, the **employee driver** has not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

Record of Negative Screening

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An employee required to submit to an alcohol and/or controlled substance screening as provided in this Policy and whose screening results are negative may, at their option, have their personnel file documented to reflect the negative result.

Prescription Drugs

All bus drivers shall notify the DER of the use of any prescription drugs. The Board may require certification from the prescribing physician that the use of the prescription drug will not have an adverse affect on the driver's ability to properly perform safety-sensitive functions.

Consequences to ~~Employees Drivers~~ Engaging in Prohibited Conduct

An employee whose screening produces a positive result for a prohibited substance **who is permitted to return to work:**

1. Shall not be permitted to perform safety-sensitive functions;
2. Shall be advised by the DER of resources available to them in evaluating and resolving problems associated with the misuse of alcohol or the use of controlled substances;
3. Shall be evaluated by a **SAP substance abuse professional** who shall determine what assistance, if any, is needed to resolve problems with alcohol or controlled substance use;
4. Undergo, before returning to duty, a return to duty alcohol test indicating a breath level of less than 0.02 if the conduct involved alcohol or a controlled substance test with a verified negative result;
5. If assistance was required, the employee must be evaluated by a **SAP substance abuse professional** to determine that the **employee driver** has followed the rehabilitation program prescribed;
6. Be subject to unannounced follow-up alcohol and/or controlled substance abuse testing;
7. Be subject to the disciplinary **P**olicy and **R**egulations of the Board.

Return-to-Work Agreement

An employee who has **been permitted to returned** to work and who fails to comply with any of the terms of a **Return to Work Agreement, if provided at the employer's discretion, the**

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~~return to Work Agreement~~ shall be subject to **disciplinary action which may include** termination.

Maintenance and Retention of Records

The DER shall maintain and retain all records as required by Federal regulation. Records shall include at least the following:

1. Records Related to the Collection Process
 - a. Collection logbooks (if used);
 - b. Documents related to the random selection process;
 - c. Calibration documentation for Evidential Breath Testing Devices (EBT's);
 - d. Documentation of Breath Alcohol Technician (BAT) training;
 - e. Documentation of reasoning for reasonable suspicion testing;
 - f. Documentation of reasoning for post-accident testing;
 - g. Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing; and
 - h. Consolidated annual calendar year summaries.
2. Records Related to the **Employee's Driver's** Test Results
 - a. Employer's copy of the alcohol test form, including results;
 - b. Employer's copy of the ~~drug~~ **controlled substance** test chain of custody and control form;
 - c. Documents sent to the employer by the **MRO** ~~Medical Review Officer~~;
 - d. Documentation of any **employee's driver's** refusal to submit to a required alcohol or controlled substance test; and
 - e. Documents provided by **an employee driver** to dispute results of test.
3. Documentation of any Other Violations of Controlled Substance Use or Alcohol Misuse **Policies Rules**

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4. Records Related to Evaluations and Training
 - a. Records pertaining to ~~the Substance Abuse Professional's (SAP's)~~ determination of **an employee's driver's** need for assistance;
 - b. Records concerning **an employee's driver's** compliance with **the** SAP's recommendations, and records related to education and training;
 - c. Materials on drug and alcohol awareness, including a copy of the employer's policy on drug use and alcohol misuse;
 - d. Documentation of compliance with **the** requirement to provide **employees drivers** with educational material, including **an employee's driver's** signed receipt of materials;
 - e. Documentation of supervisor training; and
 - f. Certification that training conducted under this **Policy rule** complies with all requirements of the **Policy rule**.

5. Records Related to Drug Testing
 - a. Agreements with collection site facilities, laboratories, **MROs, Medical Review Officers (MRO's)** and consortia;
 - b. Names and positions of officials and their role in the employer's alcohol and controlled substance testing program;
 - c. Monthly statistical summaries of urinalysis; and
 - d. The employer's drug testing policy and procedures.

6. Required Period of Retention

Document to be maintained	Period required to be maintained
Alcohol test results indicating a breath alcohol concentration of 0.02 or greater	5 Years
Verified positive controlled substance test results	5 Years
Documentation of r Refusals to	5 Years

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submit to required alcohol or controlled substance tests (including substituted or adulterated test results)	
Required Calibration documentation of Evidential Breath Testing Devices (EBT's)	5 Years
Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations All follow-up tests and schedules for follow-up tests	5 Years
Driver Substance Abuse Professional's (SAP's) evaluations and referrals	5 Years
A copy of each a Annual calendar year summary	5 Years
Records obtained from previous employers concerning alcohol and drug testing	3 Years
Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices) and required training	2 Years

Document to be maintained	Period required to be maintained
Records related to n Negative and canceled controlled substance test results	1 Year
Alcohol test results indicating a breath alcohol concentration less than 0.02	1 Year
Records obtained from previous employers concerning alcohol and drug testing	3 Years
Records related to the education and training of breath alcohol	Indefinite time period

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technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions	
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Other specific types of records shall be maintained in accordance with 49 CFR 382.401.

7. Location of Records

All required records shall be maintained in accordance with Policy ~~No.~~ 8320. Records shall be made available for inspection at the Board Offices within two business days after a request has been made by an authorized representative of the ~~Federal Highway Administration~~ **FMCSA**.

8. Annual Calendar Year Summary

The DER shall prepare and maintain an annual calendar year summary of the results of its alcohol and substance abuse testing programs. The summary shall be completed no later than March 15 of each year covering the previous calendar year. The DER upon request of the **FMCSA** ~~Federal Highway Administration (FHWA)~~ will provide the annual summary to that agency in the required format.

9. Employee Information Program

The Board will provide an employee information program. The DER will be responsible for implementing the program and shall ensure that each **employee driver** receives information in the manner specified below:

- a. By receiving a copy of this ~~P~~policy and any subsequent revisions.
- b. ~~Through attendance at a meeting~~ **The DER will provide written notice to employees of the following information** ~~at which a detailed discussion of the following is conducted:~~
 - (1) The identity of the person designated by the employer to answer **employee driver** questions about the materials;

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- (2) Which **employees drivers** are subject to the alcohol misuse and controlled substance requirements;
- (3) Explanation of what constitutes a safety-sensitive function, so as to make clear what period of the workday the **employee driver** is required to be in compliance;
- (4) Specific information concerning **employee driver** conduct that is prohibited;
- (5) The circumstances under which an **employee driver** will be tested for alcohol and/or controlled substances;
- (6) The procedures that will be used to test for the presence of alcohol and controlled substances;
- (7) The requirement that an **employee driver** submit to alcohol and controlled substance tests;
- (8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test;
- (9) The consequences for **employees drivers** found to have violated the prohibitions of this **Policy rule**, including the immediate removal of the **employee driver** from safety-sensitive functions;
- (10) The consequences for **employees drivers** found to have an alcohol concentration level of 0.02 or greater but less than 0.04;
- (11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life. Signs and symptoms of an alcohol or controlled substances problem, and available methods of intervening when an alcohol or a control substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

Omnibus Transportation **Employee Testing** Act of 1991
49 **CFR C.F.R.** 40 et seq.
49 **CFR C.F.R.** 382 et seq.
49 **CFR C.F.R.** 395.2

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