



## **EEAEAA - DRUG AND ALCOHOL USE BY AND TESTING FOR DRIVERS WITH A COMMERCIAL DRIVER'S LICENSE (CDL)**

### APPLICABILITY

In accordance with federal law and regulations, all bus operators and other District drivers who operate a motor vehicle requiring a commercial driver's license (CDL) are subject to a controlled substance and alcohol testing program. The purpose of the testing program is to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers.

This policy reflects several requirements of the federal drug testing regulations, but is not intended in any way to modify or limit the procedures for drug and alcohol testing specifically addressed in federal regulation. District personnel shall adhere to the detailed provisions of federal regulations in administering the District's drug and alcohol program under this policy.

### DEFINITIONS

1. Tests. References to "tests" include both drug and alcohol tests unless the context specifies otherwise.
2. Drug/Controlled Substance. The terms "drug" and "controlled substance" are interchangeable and have the same meaning. "Drugs" refer to marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines (including methamphetamines).
3. On the job. For purposes of this policy, (1) a nonexempt employee is on the job while he or she is being paid by the District; (2) an exempt employee is on the job while he or she is under the control or supervision of the District and is performing tasks, functions or duties at the request of or for the benefit of the District.

### PROHIBITED CONDUCT

1. No driver shall have prohibited concentrations of alcohol (0.02 or greater) in his or her body while on the job.
2. No driver shall have any detectable quantities of controlled substances in his or her body while on the job, except as stated below.
3. No driver shall possess or consume alcohol or possess or use any controlled substance (except as stated below) on the job, or on call, on school premises or

other sites where employees may be assigned while driving a District vehicle or a personal vehicle on District business, or as a part of any school-sponsored or sanctioned activity.

4. No driver shall consume alcohol during the four hours prior to driving.
5. No driver shall consume alcohol during the eight hours following a motor vehicle accident.

The prohibitions in paragraphs 2 and 3 above do not apply when the controlled substance is being used pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect his or her ability to safely operate a motor vehicle and has provided a written statement of these facts to the driver's supervisor.

## REQUIRED TESTING

Drivers shall be subject to pre-employment/pre-duty, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and drug testing pursuant to procedures set forth in federal regulations. These procedures use an evidential breath testing device for alcohol testing. For controlled substance testing, urine specimen collection and testing by a laboratory certified by the U.S. Department of Health and Human Services shall be required.

## PRE-EMPLOYMENT

Pre-employment testing shall be administered to an applicant only after he or she has been offered a position in the District and prior to the first time the driver performs any safety-sensitive functions for the District.

Testing shall also be conducted on employees seeking transfer into safety-sensitive positions. Employment with the District is conditional upon the applicant receiving a negative alcohol and drug test result and signing a waiver for release of pertinent drug and alcohol testing information from previous employers.

## POST-ACCIDENT TESTS

Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable on any driver who:

1. Was performing safety-sensitive functions with respect to the vehicle if the accident involved loss of human life; and/or
2. Received a citation under state or local law for a moving traffic violation arising from the accident.

No driver involved in an accident may use alcohol for the eight hours after the accident or until after he or she undergoes a post-accident alcohol test, whichever occurs first.

If an alcohol test is not administered within two hours, or if a drug test is not administered within 32 hours after the accident, the District shall prepare and maintain records explaining why the test was not conducted.

Tests conducted by authorized federal, state or local officials will fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the District. Breath tests may validate only the alcohol test and cannot be used to fulfill controlled substance testing obligations.

Before any driver operates a commercial motor vehicle, the District shall provide him or her with post-accident testing requirements.

#### RANDOM TESTS

Tests shall be conducted on a random basis at unannounced times throughout the year. Random tests for alcohol shall be conducted just before, during or just after the performance of safety-sensitive functions. Random tests for drugs do not have to be conducted in immediate time proximity to performing safety-sensitive functions. Once notified of selection for drug testing, a driver must proceed to a collection site to provide a urine specimen.

Drivers shall be selected by a scientifically valid random process, and each driver shall have an equal chance of being tested each time selections are made. The number of bus drivers selected for random testing shall be in accordance with federal regulations.

#### REASONABLE SUSPICION TESTS

Tests shall be conducted when a properly trained supervisor or District official has reasonable suspicion that the driver has violated the District's alcohol or drug prohibitions. This reasonable suspicion must be based on specific contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, breath and/or body odors. The observations may include indications of chronic and withdrawal effects of controlled substances.

Alcohol tests shall be authorized for reasonable suspicion only if the required observations are made during, just before or just after the period of the work day when the driver must comply with alcohol prohibitions. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the District shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after eight hours.

An alcohol test may not be conducted by the person who determines that reasonable suspicion exists to conduct such a test.

A supervisor or District official who makes a finding of reasonable suspicion also must make a written record of his or her observations leading to a reasonable suspicion drug test within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

## RETURN TO DUTY

Before a driver is reinstated, if at all, the driver shall undergo a drug or alcohol test.

Employees whose conduct involved misuse of drugs may not return to duty in a safety-sensitive function, if at all, until the return-to-duty drug test produces a verified negative result.

Employees whose conduct involved alcohol may not return to duty in a safety-sensitive function, if at all, until the return-to-duty alcohol test produces a verified result that meets federal and District standards.

## FOLLOW-UP TESTS

A driver who violates the District's drug or alcohol prohibition and who subsequently is identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Follow-up alcohol testing shall be conducted just before, during or just after the time when the driver is performing safety-sensitive functions.

## CONSEQUENCES IF TESTING INDICATES DRUG OR ALCOHOL MISUSE

If testing confirms prohibited alcohol concentration levels or the presence of a controlled substance (except controlled substances authorized by a physician as described in this policy), the employee shall be removed immediately from safety-sensitive functions in accordance with federal regulations and shall be subject to other disciplinary action up to and including discharge. Before a driver is reinstated, the driver shall undergo an evaluation by a substance abuse professional, comply with any required rehabilitation, and undergo a return-to-duty test with verified, satisfactory test results.

A driver who is prohibited from performing safety-sensitive functions may be assigned to non-safety-sensitive functions until such time as the driver complies with the requirements for returning to duty.

The Board retains the authority, consistent with state and federal law, to discipline or discharge any employee whose current use of alcohol or drugs adversely affects the employee's qualifications for and/or performance of his or her job. The District is not required under federal law requiring drug and alcohol testing to provide rehabilitation, pay for substance abuse treatment or to reinstate the employee.

All employment decisions involving reinstatement, termination or dismissal shall be made in accordance with applicable District policies and negotiated agreements.

## RECORD RETENTION

The District shall maintain records in compliance with federal regulations in a secure location with controlled access. With the driver's consent, the District may obtain any of the information concerning drug and alcohol testing from the driver's previous employer. A driver shall be entitled upon written request to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances including information pertaining to alcohol or controlled substance tests.

Records shall be made available to a subsequent employer upon receipt of a written request from the driver.

## NOTIFICATIONS

Each driver shall receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the District's policy and regulations for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. The information shall identify:

1. The persons designated by the District to answer driver questions about the materials.
2. Categories of drivers who are subject to the drug and alcohol testing requirements.
3. Sufficient information about the safety-sensitive functions performed by drivers to make clear for what period of the work day driver compliance is required.
4. Specific information concerning driver conduct that is prohibited.
5. Circumstances under which a driver will be tested for drugs and/or alcohol.
6. Procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing process, safeguard the validity of test results and ensure that test results are attributed to the correct driver.
7. The requirement that a driver submit to drug and alcohol tests administered in accordance with federal regulations.
8. An explanation of what constitutes a refusal to submit to drug or alcohol testing and the attendant consequences.

9. Consequences for drivers found to have violated the drug and alcohol prohibitions, including the requirement that the violating driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation and treatment.
10. Consequences for drivers found to have alcohol concentration of 0.02 or greater but less than 0.04.
11. Information concerning the following:
  - Effects of drugs and alcohol on an individual's health, work and personal life;
  - External and internal signs and symptoms of a drug or alcohol problem; and
  - Available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program and/or referral to administrative officials.

Each driver must sign a statement certifying that he or she has received a copy of the above materials.

If reasonably possible, the District shall inform drivers before drug and alcohol tests are performed.

The District shall notify a driver of the results of a pre-employment drug test if the driver requests such results within 60 calendar days of being notified of the disposition of his or her employment application.

The District shall notify a driver of the results of random, reasonable suspicion and post-accident drug tests if the test results are verified positive. The District also shall tell the driver which controlled substances were verified as positive. Upon request by the employee, the District shall forward the second, duplicate specimen to any laboratory of the employee's choosing, so long as the laboratory chosen is U.S. Department of Health and Human Services certified.

No drivers shall use medications which are contraindicated for operation of a commercial vehicle unless a licensed physician provides written release stating he or she has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle, and the driver must give this release to his or her supervisor before performing safety-sensitive functions.

#### REFUSALS TO SUBMIT TO TESTING

It is prohibited conduct to refuse to submit to a controlled substance or alcohol test required under this policy. A refusal to submit is defined as follows:

1. Failure to provide adequate breath for alcohol testing without a valid medical explanation and after the employee has received notice of the requirement of a breath test in accordance with this policy.
2. Failure to provide adequate urine for a controlled substance test without a valid medical explanation after the employee has received notification of the requirement for urine testing in accordance with this policy; or
3. Engaging in conduct that clearly obstructs the testing process.

## ENFORCEMENT

Any driver who refuses to submit to post-accident, random, reasonable suspension, return-to-duty or follow-up tests will not be allowed to perform or continue to perform safety-sensitive functions and shall be subject to other disciplinary action up to and including discharge.

A driver who in any other way violates District prohibitions related to drugs and alcohol shall receive from the District the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs available to evaluate and resolve drug and alcohol-related problems. The violating driver shall also be subject to other disciplinary action up to and including discharge.

Any substance abuse professional who determines that a driver needs assistance shall not refer the driver to a private practice, person or organization in which the substance abuse professional has a financial interest except under circumstances allowed by law.

Before the driver is returned to safety-sensitive duties, if at all, the District must ensure that the employee:

1. Has been evaluated by a substance abuse professional;
2. Has complied with any recommended treatment;
3. Has taken a return-to-duty drug and alcohol test with a result indicating an alcohol concentration level less than 0.02 and no detectable quantities of controlled substances (except those authorized by a physician as described in this policy); and
4. Is subject to announced follow-up drug and alcohol tests. The number and frequency of such follow-up testing will be as directed by the substance abuse professional and will consist of at least six tests in the first 12 months following the driver's return to duty.

## OTHER PROVISIONS

The District shall take steps to ensure that supervisors receive proper training to administer the controlled substance and alcohol testing program and that employees receive the notifications required by federal regulations.

The director of transportation services, with the approval of the District's risk manager and in conjunction with the executive director of human resources, shall establish the District's controlled substance and alcohol testing program that fulfills the requirements of the federal regulations. Such programs shall include that employees who test positive for drugs may direct that the second, duplicate specimen be forwarded to any laboratory of the employee's choosing so long as the laboratory chosen is certified by the U.S. Department of Health and Human Services.

Adopted: November 1994  
Revised: March 25, 1996  
Revised: October 13, 1997  
Revised: August 23, 1999

### LEGAL REFS:

49 U.S.C. 2717, et seq. (Omnibus Transportation Employee Testing Act of 1991)  
49 C.F.R. Part 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs)  
49 C.F.R. Part 382 (Controlled Substance and Alcohol Use and Testing)  
49 C.F.R. Part 391 (Qualification of Drivers)  
C.R.S. 42-2-501, et seq. (Commercial Driver's License Act)  
8 CCR 1507-1 (Colorado Department of Public Safety Rules)

### CROSS REFS:

EEAEA, Bus Operator Requirements, Training, and Responsibilities  
GBEC, Employee Use and Possession of Drugs and Alcohol  
GDQD-R, Discipline, Suspension, and Dismissal of Support Staff