

**U.S. DEPARTMENT OF COMMERCE**

**DRUG AND ALCOHOL-FREE WORKPLACE**

**TESTING GUIDE**



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## Preface

The Department of Commerce's Drug and Alcohol-Free Workplace Testing Guide was established to provide guidance on drug and alcohol testing procedures for positions covered by Executive Order EO 12564 and regulated by the Department of Health and Human Services program; and for positions covered by the Omnibus Transportation Employee Testing Act of 1991 and regulated by the Department of Transportation. This Guide may be used in conjunction with the Department's Drug-Free Workplace Plan (Plan) only as it relates to positions covered by the Plan.

NOTE: Under the Order and the delegation of authority from the White House Office of National Drug Control Policy (ONDCP), the Interagency Coordinating Group Executive Committee (ICGEC) is responsible for review and approval of the Department's Drug and Alcohol-Free Workplace Guide (Guide) and for approving the addition or deletion of a testing designated position (TDP) from the Department's Program. The ICGEC's 1999 and 2010 issuance of their Guidance for Selection of Testing Designated Positions (TDPs) is the mandatory guidance to be followed in designating a position in the Plan as a TDP.

**DEPARTMENT OF COMMERCE  
DRUG AND ALCOHOL-FREE WORKPLACE TESTING GUIDE**

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## I. INTRODUCTION

### A. Policy

It is the Department of Commerce's (Department's) policy that its workplace be free from the illegal use, possession, or distribution of controlled substances, (as specified in Schedules I through V, as defined in Title 21 United States Code (U.S.C.) 802(6) and listed in Part B, Subchapter 12 of that Title) by the officers and employees of the Department. The possession and distribution of controlled substances will be dealt with promptly in accordance with legal and administrative disciplinary procedures. However, the policy's primary goal is to ensure that illegal drug use is eliminated, and that the Department's workplace is safe and secure for all Federal workers consistent with the requirements set forth in the Department of Health and Human Services (HHS) Drug-Free Workplace Program. Further, it is the Department's policy that its workplace is free from alcohol misuse and controlled substance abuse as set forth in the Department of Transportation's (DOT) drug and alcohol testing program. The DOT program applies to all employees required to have a commercial driver's license and who operate a commercial motor vehicle, as defined by Title 49 Code of Federal Regulations (CFR) Part 382. Thus, references made to "DOT defined (or covered) positions" refer to Departmental positions covered under and subject to the DOT drug and alcohol-testing program.

This Guide amplifies the principal requirements of the laws and regulations of both programs and provides procedural guidance for the administration of a drug and alcohol-free workplace.

### B. Governing Laws and Regulations

Executive Order 12564, "Drug-Free Federal Workplace;"

Executive Order 10450, "Security Requirements for Government Employment;"

Executive Order 13526, "National Security Information;"

Section 503 of the "Supplemental Appropriations Act of 1987," Pub. L. 100-71, 101 Stat. 391, 468-471, codified at Title 5 U.S.C. 7301 note (1987);

*Mandatory Guidance for Selection of Testing Designated Positions (TDPs)* – 1999, 2010 and 2024 (Mandatory Guidance)

Civil Service Reform Act of 1978, Pub. L. 95-454;

Section 523 and 527 of the "Public Health Service Act" and implementing regulations at 42 CFR Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Record;

5 U.S.C. § 552a, The Privacy Act of 1974, prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to those records by the individual(s) to whom they pertain;

15 CFR Part 4, Implementing the Privacy Act of 1974 within the Department of Commerce; Federal Employees Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570; Department of Commerce Administrative Order 202-751, "Discipline";

The Omnibus Transportation Employee Testing Act of 1991;

5, U.S. Code Chapter 73;

5 CFR 794, Federal Employees' Health and Counseling Programs;

49 CFR 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs; and

49 CFR 382, Controlled Substances and Alcohol Use and Testing.

### **C. Coverage**

Positions covered by this Guide include TDPs in the **Presumptive** and **Preferred** categories under the 1999 and 2010 Mandatory Guidance, as well as positions covered by the DOT drug and alcohol testing program include:

- *Presumptive category*
  - Employees that carry firearms;
  - Motor Vehicle Operators Carrying Passengers; and
  - Aviation Flight Crew Members and Air Traffic Controllers
- *Preferred category*
  - Employees authorized to carry firearms;
  - Aviation Personnel (e.g., flight instructors, ground instructors, flight testing personnel, aircraft dispatchers, maintenance personnel, aviation security and screening personnel, and aircraft safety inspectors);
  - Presidential Appointees Requiring Senate Confirmation (PAS);
  - Front line Law Enforcement Personnel; and
  - Positions requiring "Secret", "Top Secret" or "Top Secret with SCI access";
- Positions covered by the DOT alcohol and drug testing program are those which contain a requirement to possess a commercial driver's license (CDL) to operate a commercial motor vehicle which (1) has a gross vehicle weight rating to 26,001 or more pounds; (2) is designed to transport 16 or more passengers, including the driver, or (3) is used in the transportation of materials found to

be hazardous and which require the motor vehicle to be placarded. At this time, only positions in the continental United States are covered by this program.

#### **D. Definitions**

Unless otherwise noted the definitions apply to both the Department of Health and Human Services and the Department of Transportation programs.

**Alcohol Screening Device (ASD).** A breath or saliva device, other than an Evidential Breath Testing Device (EBTD), that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a product conforming list (PCL) for such devices. An ASD can be used only for screening tests for alcohol and may not be used for confirmation tests. (DOT defined positions only).

**Alcohol, Use and Consumption.** The intoxicating agent in beverage alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol. Alcohol concentration (or content) means the alcohol volume of breath expressed in terms of grams of alcohol per 210 liters of breath indicated by an evidential breath test. Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. (DOT defined positions only)

**Applicant/Pre-Employment.** Any individual tentatively selected for employment or any individual who has been tentatively identified for placement in a testing designated position (i.e., directed reassignment for the "good of the service") and who has not, immediately prior to the placement, been subject to random testing.

**Breath Alcohol Technician (BAT).** A trained individual who instructs and assists employees/applicants in the alcohol testing process and operates an EBTD. A BAT conducts alcohol screening and confirmation tests. (DOT defined positions only)

**Commercial Driver's License (CDL).** A license to operate a commercial vehicle which (1) has a gross vehicle weight rating of 26,001 or more pounds; (2) is designed to transport 16 or more passengers, including the driver; or (3) is used in the transportation of materials found to be hazardous and which require the motor vehicle to be placarded. (DOT defined positions only)

**Drugs.** Marijuana, opiates, phencyclidine (PCP), amphetamines, cocaine and ecstasy are the drugs for which employees in TDPs are tested.

**Drug Program Coordinator (DPC).** An official within each Servicing Human Resources Office assigned to carry out the responsibilities of the Department's Plan.

**Drug Program Manager (DPM).** The DPM shall implement, direct, administer, and manage the drug program for the Department. The DPM shall serve as the principal contact with the laboratory in assuring the effective operation of the testing portion of the program.

**Employee Assistance Program (EAP).** The Department-based counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems. The EAP Counselor monitors the progress of

employees while in treatment and is responsible for conducting substance and alcohol awareness training.

**Evidential Breath Testing Device (EBTD).** A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath, 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. (DOT defined positions only)

**Illegal Drug.** A controlled substance included in Schedule I or II, as defined by 21 U.S.C. § 802(6), the possession of which is unlawful under Chapter 14 of that Title. The term "illegal drug" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

**Management Official.** An employee required or authorized by the Department to formulate, determine or influence the policies of the Department (5 U.S.C. § 7103(a)(11)).

**Medical Review Official (MRO).** The official who is responsible for receiving laboratory results and who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and other relevant biomedical information.

**Performing a safety-sensitive function.** A driver is considered to be performing a safety-sensitive function during any period in which they are actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. (DOT defined positions only)

**Random Testing.** A system of alcohol and/or drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform-unannounced testing of employees occupying a specified area, element or position, or may be a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

**Screening Test.** (DOT defined positions only)

- In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.
- In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.



**Screening Test Technician.** A person who instructs and assists drivers in the alcohol testing process and operates an alcohol screening device (breath or saliva) that is approved by the NHTSA.

**Sensitive Positions.** (HHS defined positions only)

- Positions designated by the Secretary or his/her designee as Special Sensitive, Critical Sensitive, or Noncritical-Sensitive under 5 CFR Part 732; employees designated by the Secretary or his/her designee as sensitive in accordance with EO No. 10450, as amended;
- Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness under Section 4 of EO No. 12356;
- Individuals serving under Presidential appointments;
- Law enforcement officers as defined in Title 5 U.S.C. §§ 8331(20) and 8401(17); or
- Positions that are engaged in law enforcement, have access to classified information, engage in activities affecting public health or safety, operate mechanical equipment, or other functions requiring a high degree of trust and confidence.

**Site Coordinator.** An employee assigned to carry out the responsibilities of the Department's Drug-Free Workplace Program (DFWP) for Departmental field installations.

**Substance Abuse Professional.** A person who evaluates employees who have violated DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

**Supervisor.** An employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment (5 U.S.C. § 7103(a)(10)).

**Testing Designated Positions.** Employee positions, which have been designated for random testing.

**Test Types.** Applicant, Random, Reasonable Suspicion, Accident/Unsafe Practice, Follow-up, Voluntary, and Return to Duty.

## **Verified Positive Test Result**

- **Drug Test:** Test results that have been screened positive on an FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by the Department of Health and Human Services), and evaluated with a determination that there is no legal justification for the positive test result.
- **Alcohol Test:** Test results in which both the initial and confirmation tests were performed by a trained breath alcohol technician, using an approved evidential breath testing device, showing an alcohol concentration of 0.02 or greater.

## II. ROLES AND RESPONSIBILITIES

### A. Drug Program Coordinator

Each SHRO will have a Drug Program Coordinator (DPC) who will be responsible for implementing, directing, administering, and managing the drug and alcohol program within the bureau. The DPC will serve as the principal contact with the DPM in assuring the effective operation of the collection portion of the program. In carrying out this responsibility, the **DPC** shall:

- Arrange for employee drug testing and notification, as authorized under this Guide;
- Ensure that all employees entering on duty to a TDP receive an individual notice providing 30 calendar days advance notice that their position is subject to random drug testing and the employee signs the acknowledgement form;
- Ensure that any employee moving into a TDP from a non-TDP or from one TDP to a different TDP receives a new 30-day notice and signs the acknowledgement form indicating receipt of the notice;
- Ensure that all employees in TDPs have a signed acknowledgment form on record. No employee may be randomly tested unless an acknowledgement form indicating at least 30-day advance notice is on record with the DPC;
- Notify supervisors of employees scheduled for random drug testing. Notify employees under the procedures in this guide to report for random drug testing; (For notification procedures see III.)
- In coordination with the EAP Counselor, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation;
- Coordinate drug-free workplace activities whenever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives;
- Inform Principal Human Resources Managers, Servicing Human Resources Managers and the DPM of the results of applicant testing; and
- Submit the number of random, pre-employment, and other tests administered by the thirtieth of each month to the DPM. Submit statistical reports to the DPM within 30 calendar days after the end of each fiscal year for HHS regulated positions and by January 31 for DOT regulated positions, as requested. Statistical Reports are located in Appendix A.

## **B. Drug Program Manager**

The DPM, located in the Department's Office of Human Resources Management, will provide technical management, guidance, and program oversight. The DPM coordinates with bureau DPCs regarding their duties and responsibilities for program implementation. The DPM, with the Employee Assistance Program (EAP) Counselor, will publicize and disseminate alcohol and drug program educational materials. The DPM provides positive test results to the SHRO, as appropriate. The DPM, in consultation with the Department Employee Relations Program Manager, has oversight over the application of consistent disciplinary action for violations of drug program policy, regulations and procedures. The DPM will consult with the Office of the General Counsel (OGC) on all questions relating to a direct observation drug test. The DPM will also forward all chain of custody issues, as referred by the medical review officer, to OGC.

## **C. Employee Assistance Program (EAP) Counselor**

The EAP Counselor for a bureau/operating unit or bureaus will:

- Implement and operate the EAP within the bureau/operating unit (s) assigned to the Coordinator;
- Provide counseling and treatment services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;
- Coordinate rehabilitation, education, and counseling activities with the bureau/operating unit DPC, the MRO, the DPM, and supervisors, as appropriate;
- Work with the DPC to supplement educational materials and training to managers, supervisors, union representatives, and employees on illegal drugs and alcohol in the workplace;
- Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
- Monitor the progress of referred employees during and after the rehabilitation period; and
- Maintain a list of rehabilitation or treatment organizations that provide counseling and rehabilitative programs.

## **D. Employees.**

Employees are responsible for complying with the requirements of the Department's Drug and Alcohol-Free Workplace Program and testing procedures.

#### **E. Medical Review Officer.**

The Medical Review Officer (MRO) will:

- Receive from the laboratory the original chain of custody forms for each specimen collected. Assure that an individual for whom a confirmed positive test has been reported is afforded an opportunity to justify the test results. In reviewing the laboratory results, the MRO may conduct a medical interview with the individual, review the individual's medical history, or review other biomedical factors. Individuals are not entitled to present evidence in a trial type administrative proceeding. The MRO must review all medical records that the tested individual submits when a confirmed positive test could have resulted from legally prescribed medication.
- If any question arises as to accuracy and validity of a confirmed positive test result the MRO should, in collaboration with the laboratory director and consultants, review the laboratory records to determine whether the required procedures were followed.
- If there is no reasonable medical reason for the legitimate verified positive test result, it will be disclosed to the DPM. Any medical information provided to the MRO by the individual that is not specifically related to the use of illegal drugs will be treated as confidential and will not be disclosed.
- If it is determined with reasonable certainty that there is a legitimate medical explanation or other reason to account for the confirmed positive laboratory findings, the test will be deemed to be negative and no information identifying the specific employee will be disclosed. Any medical information provided by the individual will be treated as confidential. To ensure adequate documentation, a screening report on all positive drug tests as reported by the laboratory will be prepared and maintained by the MRO. In cases where the MRO determines the positive result is medically justified, every effort will be made to obtain written documentation (prescriptions, letters from physicians, etc.) to support the decision. However, the final decision on documentation requirements rests with the MRO.
- Report all positive results to the DPM: and
- In cases of negative results, a screening report will be prepared and maintained by the MRO when omissions on the chain of custody form could question the forensic validity of the result. A recollection and retesting can be ordered by the MRO.

#### **F. Office of Human Resources Management (OHRM).**

OHRM will oversee the administration of these programs in achieving the objective of a drug and alcohol-free workplace throughout the Department with due consideration of the rights of the Government, the employee, and the general public.

**G. Principal Human Resources Manager (PHRM)/Servicing Human Resources Office (SHRO).**

Each PHRM/SHRO will:

- Provide such oversight as is necessary to ensure that procedures are followed within their areas of responsibility.
- Ensure that the position description for each HHS regulated position and each DOT regulated position reflects the requirement to be tested for alcohol misuse and/or controlled substances.
- Implement the procedures in this Guide for their serviced population; and
- Assist managers and supervisors in the EAP or Substance Abuse Professional referral process and in taking appropriate disciplinary action.

**H. Secretary or Designee.**

The Secretary or their designee will be responsible for ensuring that resources are provided for alcohol and drug programs.

**I. Bureau/Operating Units.**

Each Bureau/Operating Unit will:

1. Ensure the provisions and requirements of the Department's DFWP, and applicable laws, rules, and regulations that govern the DOT alcohol and drug-free workplace programs are followed within their organization.
2. Ensure that EAP services, which emphasize high level direction, education, counseling, referral to rehabilitation, and coordination with available community resources are available to employees.
3. Ensure that supervisors are trained to assist in identifying and addressing alcohol abuse and illegal drug use by the Department's employees.
4. Provide for self-referral, as well as supervisory referrals, for treatment services with maximum respect for individual confidentiality consistent with safety and security issues.
5. Provide for testing as provided in this Guide and as it applies to HHS and DOT designated positions.
6. Ensure compliance with all confidentiality requirements.

7. Ensure compliance with the requirements of the Privacy Act of 1974 for Employee Assistance Program records and Title 49 CFR Part 382, subpart D records are maintained on individuals.

#### **J. Substance Abuse Professional.**

The substance abuse professional (SAP) is responsible for:

- Initial and follow-up employee evaluations, recommendations for continuing treatment and follow-up testing plan;
- Making face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;
- Referring employees to appropriate education and/or treatment program;
- Conducting face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;
- Providing a follow-up drug and/or alcohol testing plan for the employee; and
- Providing employee and management representation with recommendations for continuing education and/or treatment. (DOT regulated positions only)

#### **K. Supervisors.**

Each supervisor will:

- Participate in training to recognize and address alcohol abuse and illegal drug use by employees;
- Provide information regarding referral of employees to the EAP, procedures and requirements for alcohol and drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be abusing alcohol or using illegal drugs;
- Notify the DPC when a selected employee is on approved leave or is otherwise unavailable for random testing for bona fide reasons; and
- Propose appropriate disciplinary action in consultation with PHRM/SHRO for an employee who tested positive or failed to comply with the procedures in this guide for testing.

### SECTION III. CATEGORIES OF TESTING

#### A. Applicant/Pre-Employment Testing

- Anyone tentatively selected for a testing designated position (TDP), including all current Federal employees and Schedule C employees, will be tested for illegal substances before a final job offer is made. All vacancy announcements for a TDP position will contain notification to this effect.
- A verified positive test (or refusal to take the test) is grounds for declining to extend the offer of employment to any applicant for a TDP. External applicants may not re-apply for employment with the Department for six months from the date of the positive test results.

**Note:** The requirement for applicant testing does not apply to Department employees currently assigned to testing designated positions who are tentatively selected for another testing designated position within the Department.

#### B. Random Testing

- Employees are subject to random testing because their positions have been determined to meet the criteria as stated in EO 12564 and the Plan for TDPs;
- Any employee who occupies a TDP will be notified at least 30 calendar days prior to the start of testing that their position has been designated as a TDP, and that they are in the random testing pool;
- Relief
  - Administrative relief does not apply to bargaining unit employees covered by a negotiated grievance procedure (NGP) unless the NGP specifically excludes the subject of the position designation as a TDP under the Preferred or Presumptive criteria from the scope of the NGP. If the employee believes their position has been wrongly designated as a TDP, that employee may file an administrative appeal with the OHRM/DPM. The employee must submit, in writing, a request for review to the OHRM/DPM within 15 calendar days of notification, providing all relevant information. The OHRM/DPM will issue a written decision on the request. If the employee is unhappy with the decision, they may file a request with the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) or designee. The employee must submit, in writing, an appeal to the CFO/ASA or designee within 15 calendar days of notification, setting forth all relevant information. The CFO/ASA or designee shall review the appeal based upon the criteria applied in designating that employee's position as a TDP. The decision of the CFO/ASA or their designee is final and may not be grieved under the Department's Administrative Grievance Procedure, DAO 202-711. The decision by the CFO/ASA, or designee, is subject to review and approval by the ICGEC under E.O. 125564.
  - Relief for Bargaining Unit Employees. Bargaining unit employees covered by an NGP that does not specifically exclude the issue of designation of a position as a TDP under the Preferred or Presumed criteria from the scope of the NGP must use the NGP. If the matter is



referred to the arbitration, either party (management or labor) may file exceptions with the Federal Labor Relations Authority under 5 U.S.C. § 7122. However, the final decision under is subject to review and approval by the ICGEC under E.O. 125564.

- An individual selected for random testing, will be notified the same day the test is scheduled, not later than two (2) hours before the scheduled testing. The supervisor will verbally and privately tell the employee that they have been identified randomly for drug (or drug and alcohol, as appropriate to the position) testing. The employee will be instructed as to the time and location to report for testing and to bring photo identification. The supervisor will answer any questions the employee may have at this point.
- An employee selected for random testing may postpone or defer testing if the employee's first-and second-line supervisors agree that a deferral is necessary. Deferrals can only be given if the employee is on leave status (and therefore unavailable) or on official business away from the test site. An employee whose random test is deferred will be subject to an unannounced test within the next 60 calendar days.
- While in a rehabilitation or counseling program an employee may be exempted from the random TDP pool, with the concurrence of the DPM. This exemption will last no longer than 60 calendar days or for the time period specified in the rehabilitation plan approved by the SAP, supervisor, and PHRM/SHRO. After the rehabilitation plan is completed the employee will be subject to unannounced follow-up testing.

**Note:** DOT regulated positions are subject to random testing at the rate of 50% annually for drug testing and 10% annually for alcohol testing. The percent is subject to change on an annual basis.

### **C. Reasonable Suspicion Testing.**

Consultation between OGC and the DPM is required prior to ordering reasonable suspicion testing.

- Reasonable suspicion testing may be required of any employee when there is a reasonable suspicion that the employee used illegal drugs or abused alcohol on or off-duty. Evidence of off-duty drug or alcohol use may be relevant to a decision to order an employee to submit to testing based on reasonable suspicion of drug or alcohol use.
- Suspicion of on-duty drug or alcohol use or impairment must be supported by either:
  - Specific personal observations that a supervisor or other management official can articulate concerning the employee's job performance, behavior, speech, or bodily odors, or;

- Hearsay information or personal observation from an employee or an unidentified source. Where this information is relied on, there must be corroborative evidence from a manager or supervisor who has training and experience in identifying job impairment caused by drug or alcohol use.
- Suspicion of on-duty alcohol or drug use for employees who have a commercial driver's license and who operates a commercial motor vehicle must be based on observations concerning the appearance, behavior, speech, or body odors of the driver. Such observations must be specific and contemporaneous and expressed clearly in writing. If an alcohol test is not conducted within two (2) hours following a determination of reasonable suspicion, the supervisor will prepare and maintain a record stating the reasons the test was not promptly conducted. If an alcohol test is not conducted within eight (8) hours following the determination of reasonable suspicion, the supervisor will cease attempts to conduct the alcohol test and will state in the record the reason(s) for not conducting the test.
- To ensure uniformity and consistency in these cases, the following procedures should be followed:
  - If a supervisor/manager believes a case exists which meets the criteria listed above, he/she should contact the PHRM/SHRO;
  - If the PHRM/SHRO concurs with the assessment, the supervisor/manager should detail in writing the circumstances, which formed the basis to warrant the testing;
  - The PHRM/SHRO should contact the bureau DPC who in turn should contact the DPM;
  - The DPM, in consultation with the DPC, Employee Relations Manager, Human Resources Specialist, and the Office of General Counsel, will provide a recommendation as to whether or not a reasonable suspicion test is warranted;
  - If the test is warranted, the DPC will coordinate actual collection of the specimen, and;
  - If the test is not warranted, a rationale for this decision will be documented by the office/bureau's DPC. (In issues of drug trafficking, the Security Office should be consulted.)

#### **D. Accident and Unsafe Practice Testing**

- If an employee is suspected of having caused or contributed to an accident, the appropriate supervisor will present the facts to the PHRO/SHRO for approval of testing. The supervisor will immediately prepare a written report detailing the facts and circumstances that warranted the testing. The DPM will be notified of the circumstances which required alcohol and/or drug testing as soon as possible.
- Once a determination has been made that circumstances warrant testing, proper notification must be given to the employee, and testing must be accomplished as soon as

practicable after the accident/incident.

#### **E. HHS Regulated Positions**

- Post-accident drug testing may be conducted when, based upon the circumstances of the accident, the actions of the employee reasonably suspected of having caused or contributed to an accident meet the following criteria:
  - The accident results in a death or personal injury requiring immediate hospitalization;  
or
  - The accident resulted in damage to government or private property in excess of \$10,000.
- Whenever feasible, a drug test must be completed within four (4) hours of the accident or incident. If a post-accident test for illegal drug use is not conducted, within four (4) hours following the accident, a management official shall submit a report to the DPC stating the reasons the test was not promptly conducted.

#### **F. DOT Regulated Positions**

Post accident testing will take place as soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce:

1. Alcohol testing for each surviving driver who was performing vehicular safety-sensitive functions and involved in an accident that resulted in the loss of human life; or who received a citation within eight (8) hours of the occurrence of a moving traffic violation (under State or local law), which involved bodily injury or disabling damage to any motor vehicle required to be towed away;

If a post-accident test for alcohol is not administered within two (2) hours following the accident, a management official will submit a report to the DPC stating the reasons the test was not promptly conducted. If a post-accident alcohol test is not conducted within eight (8) hours following the accident, management will cease attempts to conduct the alcohol test and shall submit a report to the DPC stating the reasons the test was not conducted;

2. Controlled substance testing for each surviving driver who was performing vehicular safety-sensitive functions and involved in an accident that resulted in the loss of human life; or received a citation within thirty-two hours of the occurrence of a moving traffic violation (under State or local law), which involved bodily injury or disabling damage to any motor vehicle required to be towed away; and

If a post-accident test for controlled substance is not administered within 32 hours following the accident, a management official shall cease attempts to administer a controlled substance test and prepare and maintain on file a record stating the reasons the test was not promptly administered.

**Note:** Emergency (accident or unsafe practice testing and reasonable suspicion testing) or after-hours collection procedures are located in Appendix B.

## **G. Return to Duty/Follow-up Testing**

### **HHS Regulated Positions.**

Employees referred through administrative channels, and who undergo a counseling or rehabilitation program for illegal drug use through the EAP, will be subject to unannounced testing following completion of such a program for a period of one year. Such employees will be tested at the frequency stipulated in the abeyance agreement, or, in the alternative, at an increased frequency through placement in a separate random pool. This testing may occur up to four times during the first six months following program completion and up to two times during the second six months. Follow-up testing is separate from and in addition to the regular random testing program.

### **DOT Regulated Positions.**

- Bureaus will ensure that before an employee returns to duty to a position requiring the performance of a safety sensitive function, the employee's alcohol test is less than 0.02 and a verified negative test result for controlled substance use is received from the MRO.
- Once an employee is allowed to return to duty, employees will be subject to unannounced follow-up testing for at least 12 months, but not more than 60 months. The frequency and duration of the follow-up testing will be recommended by the Substance Abuse Professional as long as a minimum of six tests are performed during the first 12 months after the driver has returned to duty. Follow-up testing is separate from and in addition to the regular random testing program.

## **H. Voluntary Testing.**

In order to demonstrate their commitment to the Department's DFWP and to set an example, employees not in TDPs may volunteer for unannounced random testing by notifying the DPC in writing. Voluntary testing is limited to HHS regulated drug testing only.

## IV. NOTIFICATION PROCEDURES

### A. Applicant/Pre-employment Notification

- Vacancy Announcements for positions designated for applicant testing will state:
  - That the applicant will be tested for illegal drug use prior to appointment; and
  - That the applicant will be subject to random testing for drugs and/or alcohol, if appointed;

**Note:** Testing should be initiated only for tentatively selected applicants.

- The servicing human resources office will request applicant testing in accordance with “Applicant/Pre-employment Collections.” The drug test must be undertaken no later than 48 hours after the applicant is instructed to schedule the test.

### B. Servicing Human Resources Office Notification

- The same day the test is scheduled, preferably within three (3) hours of the scheduled testing, the DPC will notify the employee's first level supervisor. If the first level supervisor is unavailable, the next higher management official will be contacted. Each supervisor will receive a copy of "Random Drug Testing Program Checklist for Supervisors" ( Appendix C).
- No more than two hours before the test, the DPC will inform the employee of their selection for random testing and that the employee is to immediately report to the collection site. The DPC will provide the employees with a copy of the Testing Information Form. The Testing Information Form contains the employee's name and the address of the collection site. The DPC will explain that the employee is under no suspicion of taking drugs and that their name was selected randomly. The employee will be provided with a copy of “Department Drug Testing Program Checklist for Employees.” The employee must provide appropriate identification upon arrival at the collection site. Acceptable forms of identification are photo identification (e.g., DOC identification badge or driver's license, and other picture identification issued by a Federal, state, or local government), or identification by a Federal agency representative

**C. Reasonable Suspicion Notification.** Employees subject to reasonable suspicion testing will receive written notice prior to testing that includes all of the following:

- The specific basis for the drug or alcohol test;
- Assurance that the quality of testing procedures is tightly controlled, that the test used to confirm use of illegal drugs or alcohol misuse is highly reliable, and that test results shall be handled with maximum respect for individual privacy, consistent with safety, security, and confidentiality;

- Notice of the opportunity and procedures for submitting supplemental medical documentation that may support a legitimate use for a specific drug;
- The potential consequences, including disciplinary action, of a verified positive drug test result, an alcohol concentration measuring 0.04 or greater, a confirmed alcohol concentration measuring 0.02 or greater or a refusal to be tested; and
- The availability of substance abuse counseling and referral services, including the name and telephone number of the local EAP coordinator, along with instructions to specify the reason for this contact.

**NOTE:** Sample notification memorandums and letters are located in Appendix D.

## V. DRUG AND ALCOHOL COLLECTION PROCEDURES

### A. General Requirements.

Employee/applicant will report to the collection facility at the scheduled time, and present upon request photo identification (DOC photo ID, driver's license with photo, or state identification with photo).

### B. Drug Collection

At the collection facility, employee/applicant will remove outer garments such as coat or jacket. They may retain their wallet; however, all other personal belongings such as purses and briefcases will remain with outer garments. Employee/applicant will be provided a private stall or enclosure, unless under direct observation collection procedures. Employee/applicant will be instructed to wash and dry his/her hands prior to urination.

- Single specimen drug test collections are performed under HHS Program procedures. The collector ensures at least 30 ml of urine is provided.
- Split specimen drug test collections are required under the DOT Program procedures. The collector ensures at least 45 ml of urine is provided.

**C. Shy Bladder.** The term "shy bladder" usually refers to an individual either who is unable to provide a specimen upon demand or when someone is nearby during the attempted urination. If the employee/applicant tells the collector, upon arrival at the collection site, that they cannot provide a specimen, the collection procedures must begin regardless of the reason given. The employee/applicant should try to provide a specimen. The employee/applicant demonstrates their inability to provide a valid specimen when they come out of the restroom with an empty collection container. The collector should begin a "Shy Bladder" collection procedure as follows:

- The employee/applicant is given a reasonable amount of fluid to drink distributed reasonably through a period of up to three (3) hours, or until the donor has provided a sufficient amount of urine, whichever occurs first.
- The employee/applicant must remain under the observation of the collector or an agency representative to prevent the employee from possibly compromising the collection process.
- If the employee/applicant refuses to attempt to provide a specimen or leaves the collection site before the collection process is completed, the collector must discontinue the collection, record a "refusal to test" on the "Remarks" line of the Federal Custody and Control Form, and immediately notify the DPM of the situation.
- If the employee/applicant is unable to provide a sufficient specimen in three hours (3) from the time the employee/applicant first demonstrated that they were unable to provide a sufficient volume of specimen, the collection is discontinued and the DPM is notified. The

DPC will reschedule the test.

#### **D. Direct Observation Collection**

- Collection under direct observation will not be made by the collector except with authorization of the DPM.
- A directly observed collection procedure is the same as a routine collection procedure with the additional requirement that an observer physically watches the employee urinate into the collection container. The observer must be the same gender as the employee, there are no exceptions to this requirement. An observed collection is required when the person to be tested:
  - Is being tested under reasonable suspicion testing;
  - Has previously tampered with a sample;
  - Is under the influence of drugs at the time of the test;
  - Has previously been confirmed by the agency to be an illegal drug user;
  - Is seen to have equipment or implements used to tamper with urine specimens;
  - The temperature of original specimen was out of range; or
  - The specimen appeared to have been tampered with.

#### **E. Alcohol Testing Collection**

- Pre-Collection
  - If the employee is going to take a DOT drug test, to the greatest extent practicable, it must be ensured that the alcohol test is completed before the urine collection process begins.
  - If the employee needs medical attention (e.g., an injured employee in an emergency facility who is required to have a post-accident test), do not delay treatment to conduct a test.
  - The Breath Alcohol Technician (BAT) or the Screening Test Technician (STT) will follow procedures for a screening test using whatever testing device is warranted.
- Screening Test Result
  - If the test result is an alcohol concentration of less than 0.02, transmit the results to the



DPC. No further action is required.

- If the result is an alcohol concentration of 0.02 or higher, BAT/STT shall direct the employee to take a confirmation test.

#### **F. Confirmation Test**

- The BAT must wait at least 15 minutes, starting at the completion of the screening test, but no more than 30 minutes after the completion of the screening test to conduct the confirmation test.
- The employee must not eat, drink, put anything (e.g., cigarette, chewing gum) into their mouth, or belch, prior to the completion of the confirmation test.
- The confirmation test will begin at the end of the waiting period, even if the employee did not follow the instructions not to eat, drink, put anything in their mouth, or belch.
- If the alcohol confirmation test result is lower than 0.02, nothing further is required. If the alcohol confirmation test is 0.02 or higher, the DPM will be notified.
- The DPM will notify the PHRO/SHRO of alcohol confirmation test results of 0.02 or higher. The PHRO/SHRO will assist the management official in taking any appropriate and necessary administrative/disciplinary action.

## VI. MANDATORY COMPLIANCE

**A. Employee Requirements.** Employees and/or applicants are expected to comply with testing requirements to include arriving at the designated testing site in a timely manner, following all collection procedures to the best of their ability, and participating jointly with the EAP Coordinator in fulfilling conditions of referral to, and completion of rehabilitation, and/or safe harbor programs, if required.

**B. Disciplinary Actions.** The Department requires the initiation of disciplinary action of a reprimand, suspension, demotion, or removal for a positive drug test result. In cases of alcohol concentration of 0.04 on a confirmation test, the Department will initiate disciplinary action of reprimand, suspension, or removal. The Department requires initiation of removal action on the second finding of illegal drug or alcohol concentration of 0.04 on a confirmed test. All disciplinary actions must be taken in accordance with applicable law, regulation, and Department policies. Appropriate consultation with the PHRO/SHRO is required when determining disciplinary action. Disciplinary actions will be initiated for the following offenses:

- On-duty use or possession of illegal drugs. Disciplinary action will be initiated to remove an employee from Federal service, in the case of on-duty use or possession of illegal drugs.
- Drug trafficking. Disciplinary action will be initiated to remove an employee from the Federal service, where it has been determined that the employee has engaged in illegal drug trafficking, e.g., sale, manufacture, growth, distribution, or transportation.
- On-duty use of alcohol. Disciplinary action will be initiated against an employee, up to and including removal, in the case of any on-duty use of alcohol.
- Off-duty use of illegal drugs. Disciplinary action will be initiated against an employee with a verified positive drug test. The minimum disciplinary action is a letter of reprimand. However, this does not prohibit other disciplinary actions up to and including removal. A second verified positive will result in the Department proposing removal action from the Federal service. An employee participating in a Safe Harbor/Rehabilitation program will not perform safety-sensitive functions until all requirements of the program are met.
- Refusal to comply with procedures during collection or testing. Disciplinary action will be initiated against any employee who fails to report to the designated testing site without appropriate justification, refuses to provide an appropriate urine specimen or an adequate amount of breath for testing; attempts to alter, adulterate, or substitute the specimen provided; or engages in conduct that clearly obstructs the collection or testing process. The disciplinary action will be the same as a positive test or alcohol concentration of 0.04 or greater on a confirmation test. A second refusal to comply will result in the Department proposing removal from the Federal service.

**Note:** No driver who refuses to comply with procedures during collection or testing will be permitted to perform or continue to perform safety-sensitive functions.

- Refusal to enter or successfully complete a substance abuse rehabilitation program. Disciplinary action will be initiated to remove an employee who refuses to enter or fails to successfully complete counseling or a rehabilitation program under the EAP. A determination that the employee has failed rehabilitation may be made on the basis of an off-duty drug or alcohol-related misconduct, or the employee not adhering to the terms of the rehabilitation or based on a report by the rehabilitation facility to the EAP Counselor.
- Not-Fit-for-Duty. An employee subject to alcohol testing must be removed from safety-sensitive functions if the results of any bureau alcohol test produce an alcohol concentration equal to or greater than 0.02, but less than 0.04 on a confirmation test. Any employee found to be not-fit-for-duty will not perform his or her safety-sensitive functions for a period of not less than 24 hours from the time of the confirmation test.

## VII. SAFE HARBOR AND REHABILITATION

### A. Safe Harbor

Safe Harbor is available to employees assigned to Department Health and Human Services regulated TDPs.

- Employees who are eligible for safe harbor (see the Drug-Free Workplace Plan Section VIIIF) and who take advantage of the safe harbor provision and test positive, even on first test upon completion of the program, are not entitled to a second offer of rehabilitation.
- The drug testing program does not require agencies to extend safe harbor to employees, who are otherwise eligible, but are on an appointment that does not provide sufficient time to complete a rehabilitation program and the one-year follow-up testing period, or to employees serving a probationary or trial period.

### B. Evaluation and Rehabilitation

Evaluation and Rehabilitation is available to employees assigned to the Department of Transportation as regulated testing designated positions.

- Referral
  - An employee who violates an applicable prohibition in this guide will be advised of the resources available in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of the employee assistance program contacts.
  - The SAP will evaluate the employee to determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.
- Evaluation and Treatment
  - Before an employee returns to duty, requiring the performance of a safety-sensitive function, the employee will be evaluated by the SAP to determine that the employee has successfully complied with the prescribed treatment. The employee must undergo a return-to-duty alcohol test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed treatment. The employee must have a negative drug test result and/or an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties. In addition, the actions listed below must be taken if an employee has been identified as needing assistance in resolving problems associated with alcohol misuse or controlled substance use.

- Follow-up testing should be scheduled on dates of management's choosing with no discernable pattern as to timing, and the employee is given no advance notice. Follow-up testing cannot be substituted for any other test (e.g., those carried out under the random testing program). Follow-up testing that has been cancelled cannot be counted as a completed test.
- The number and frequency of follow-up tests will be directed by the SAP and consist of at least six (6) tests in the first 12 months following the employee's return to duty. The SAP counselor may direct the employee to undergo return-to-duty and follow-up testing for both alcohol abuse and use of controlled substances. Follow-up testing will not exceed 60 months from the date the employee returns to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered.
- Bureaus will ensure that the SAP who determines that an employee requires assistance does not refer the employee to their own private practice or to a practice that they have a financial interest in.

**Note:** The cost for evaluation and treatment will be borne by the employee, in accordance with DOT guidelines.

## VII. RETENTION OF RECORDS

### A. Records Maintenance.

The Department and each bureau will maintain records of its Drug and Alcohol-Free Workplace Programs in accordance with this section as well as in compliance with the Federal Records Act, the Privacy Act and other applicable statutes. The records will be maintained in a secure location with controlled access. Records related to testing will be provided to the Department of Health and Human Services on an annual basis to assist in overall program evaluation, or in the event that the Federal Highway Administration performs an audit. Additionally, these records may be necessary for any audit or investigation by the Office of Inspector General (OIG). It is the responsibility of the bureaus and servicing human resources offices to ensure that all records retention requirements are met.

### B. Period of Retention

- Five Years
  - Documentation of refusals to take required alcohol and/or controlled substances tests.
  - Bureau copy of each previous fiscal year statistical report.
  - Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen.
- Two Years
  - Records related to the alcohol and controlled substance collection process, e.g., random selection lists, applicant testing, etc.
  - Records associated with training.
- One Year
  - Records of negative and cancelled substances test results.
  - Records of alcohol tests with a concentration of less than 0.02.

### C. Access to Facilities and Records

Records will be collected and maintained in a Privacy Act system of records and disclosed only in accordance with the Privacy Act.

## IX. SUPPLEMENTAL PROCEDURES FOR DOT REGULATED POSITIONS

### A. Employee Records.

The PHRO/SHRO will, after obtaining an employee's written consent, provide the information listed below. This requirement applies only to employees seeking to begin performing safety-sensitive duties for the first time (i.e., new hires, or an employee transfer into a safety-sensitive position). If the employee refuses to provide written consent, the employee will not be permitted to perform the safety-sensitive functions.

- The information listed must be obtained from DOT regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:
  - Alcohol test results of 0.04 or higher alcohol concentration;
  - Verified positive drug tests;
  - Refusals to be tested (including verified adulterated or substituted drug test results);
  - Other violations of DOT agency drug and alcohol testing regulations; and
  - 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 process (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test) the PHRO/SHRO will seek to obtain this information from the employee.
- The information obtained from a previous employer must contain any drug and alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.
- If feasible, the PHRO/SHRO will obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, the PHRO/SHRO will obtain and review the information as soon as possible. However, the employee must not be permitted to perform safety-sensitive functions for 30 days from the date the employee first performed safety-sensitive function, unless the information has been obtained or that a good faith effort was made to obtain this information.

**B. Required Employee Information.** Bureaus will certify that all employees requiring a CDL and meeting requirements of DOT for alcohol and drug testing, have the following information regarding the DOT program prior to the start of testing:

- The identity of the person to answer employee questions about the materials.

- The categories of employees who are subject to the testing.
- Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the workday the employee is required to be in compliance. (See Appendix D)
- Specific information concerning employee conduct that is prohibited. (See Appendix D)
- The circumstances under which an employee will be tested for alcohol and/or controlled substances.
- Procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.
- The requirement the employee submit to alcohol and controlled substances tests.
- An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the consequences.
- The consequences for an employee found to have violated prohibited conduct, including removal from safety-sensitive functions; and procedures under Referral, Evaluation and Treatment.
- The consequences for an employee found to have an alcohol concentration of 0.02 or greater, but less than 0.04.
- 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 some controlled substances problem; and available methods of intervening.

### **C. Certificate of Receipt**

Each bureau will ensure that each covered employee is required to sign a statement certifying that they have received a copy of these materials. Each bureau will maintain the original of the signed certificate (file on the left side of the Official Personnel Folder) and may provide a copy of the certificate to the employee. (Note: These requirements apply to each employee subsequently hired or transferred into a position requiring driving a commercial motor vehicle.)

### **D. Training for Supervisors**

Each bureau will ensure that a person designated to determine whether reasonable suspicion exists to require an employee to undergo testing, receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.



## APPENDIX A. STATISTICAL REPORTS

### I. Department of Health and Human Services Statistical Report

The DPM will collect statistical data for HHS regulated positions, from the bureaus at the end of each fiscal year and compile anonymous statistical data for reporting the number of:

- Disciplinary and nondisciplinary actions proposed and/or taken by type of action. (Nondisciplinary actions are reported by the total number of each action.)

<b>Nondisciplinary Actions</b>	<b>Number</b>	
Referred to EAP		
Required to return to work following test		
Detailed from TDP to nonsensitive work		
Permanent Reassignment		
Retirement		
Resignation		
Other		
<b>Disciplinary Actions</b>	<b>Proposed</b>	<b>Taken</b>
Written Reprimand		
Suspension less than 15 days		
Suspension 15 days or more		
Indefinite suspension		
Demotion		
Removal/separation		
Enforced leave		

- Reasons for disciplinary actions by type of action taken.

<b>Reason</b>	<b>Separation</b>	<b>Other Actions</b>
Possession of drug/selling at work		
Conviction for a drug offense		
Direct observation of drug use		
Refusing urinalysis		
Specimen tampering		
Tested positive for drug use: first finding		
Tested positive for drug use: second finding		
Refusal to cooperate		
Failure to successfully complete EAP		
Recommended counseling/treatment		
Other reasons		

This data, along with other pertinent information, will be compiled for inclusion in the Department's annual report to HHS

**APPENDIX B. EMERGENCY/AFTER HOURS COLLECTION**  
**PEMBROOKE OCCUPATIONAL HEALTH, INC.**

Emergency/After Hours Collection Procedures

Emergency/After Hours Collections

DPCs are responsible for scheduling emergency (post-accident and reasonable suspicion) collections. In order to ensure scheduling consistency throughout the Department, the following information is provided. The DPM will be informed when a post-accident or reasonable suspicion drug test has been scheduled.

Monday thru Thursday (8:00 p.m. - 8:00 a.m.) and from Friday 7:00 p.m. to Monday 8:00 a.m. CST: Collections can be scheduled using the Pembroke Occupational Health, Inc. web site: [www.myescreen.com](http://www.myescreen.com)

Emergency and After Hours Pager Number: **804-291-8451**

The DPC will need to have the following details at hand:

- Reason for Test
- Operating Unit/DOC Location
- Contact Name, Social Security Number, and Account Number
- Donors Name, Gender, and SSN
- Occupational Series and Title
- Duty Location

## **APPENDIX C. CHECKLISTS**

### **Coordinators checklist for random testing**

To ensure confidentiality of the random test list the DPM will provide the list to the DPC. All information relating to the test list must be kept confidential.

- Ensure that the testing can be accomplished within the time frames allotted. (NOTE: It is unlikely that everyone on the list will be available for testing for legitimate reasons such as shift work, training, leave, etc.) Tests are scheduled over a period of time, so that no more than two or three employees should be absent from the work site at any given time. If a situation should occur where an excessive number of employees are actually available for testing over the scheduled test period, coordinate with the supervisor to maintain work operations.
- Several days before testing is scheduled at a facility, contact the collection contractor to coordinate testing.
- Establish time of arrival, number of tests targeted and projected length of collection with the contractor.
- Inform the collector of your availability/location during the specific testing period.
- The same day the test is scheduled, preferably within three (3) hours of the scheduled testing, the DPC will notify the employee's first level supervisor. If the first level supervisor is unavailable, the next higher management official will be contacted.
- Not later than two (2) hours before the actual collection, inform the employee verbally, and privately, that they have been identified through a random selection process for alcohol and/or drug testing. Clearly inform the employee as to the time and exact location to report for testing and instruct them to take photo identification. The employee should be given the Checklist for Employees, which provides helpful information about the collection process.
- Immediately report any problems encountered during the collection process to PHRM/SHRO and the DPM.
- Upon receipt of the official test from the collector, verify that every name on the list has been clearly annotated. Sign, date, and immediately return the list to the appropriate PHRM/SHRO.

### **Checklist for supervisors for random testing**

On the actual date that random drug testing is scheduled to be conducted, your Drug Program Coordinator (DPC) will provide the names of your employees that have been selected for alcohol and/or drug testing and the proposed schedule. This information is confidential. The following procedures should be followed in notifying employees of the collection process:

- Employees normally will be scheduled to report to the collection site at 10-minute intervals. Coordinate closely with the DPC any scheduling changes necessary to maintain work operations. Do not make any unilateral changes.
- In no instance will an employee not identified on the official test list be tested.
- A Government contractor, who will ensure the process is properly administered, will perform the collection.
- When an employee selected for random testing is unavailable for legitimate reasons (e.g., working different shifts, travel, leave), you must inform the DPC who will annotate the random test list by indicating the reason for any employee deletion from the list.
- If an employee is unable to provide a sufficient quantity of breath and/or urine, he/she will be given a reasonable period of time to provide a specimen.
- If you have any questions or concerns, you should share them with your DPC.

### **Checklist for employees for random testing**

You have been identified through a process of random selection for an alcohol and/or drug test. Please be assured that your selection and the selection of other employees in your facility for such testing in no way suggests that the agency has any specific cause to suspect the usage of alcohol or illegal drugs. The process by which you have been selected uses a computer program to make a random selection of positions to be tested. The number of employees selected for alcohol and/or drug testing is predetermined by regulatory percentage requirements. Please take a few minutes to read the following information, which describes your role in the collection process.

- Take a picture ID with you to the collection site and present it to the collector.
- When instructed by the collector, complete a pre-test/chain of custody form. On this form you may list any prescription and over-the-counter drugs that you use. If you choose not to list this information, you may indicate on the form.
- When instructed by the collector, wash and dry your hands.
- When required, remove any unnecessary outer garments, (e.g., coat, jacket, etc.) All personal belongings (e.g., purse, briefcase, etc.) must remain with outer garment(s). You may retain your wallet. You may provide the specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.
- The amount of specimen required for drug testing will be determined by which program (Department of Health and Human Services [30 ml] or Department of Transportation [45 ml]) your testing designated position is covered under.
- If you are unable to provide a sufficient quantity of breathe and/or urine you will be given a reasonable period of time to provide an adequate specimen.
- You should, along with the collector, keep the specimen in view at all times until it has been packaged and sealed for shipment. When instructed, read and sign the statement certifying that the specimen in the bottle is yours, and came from your body at the time of collection.
- If required, note the temperature reading on the bottle and verify that the temperature was correctly recorded by initialing the chain of custody form.
- If you have any question or concerns, share them with your supervisor or your Drug Program Coordinator.

## APPENDIX D. SAMPLE MEMORANDUMS AND LETTERS

MEMORANDUM FOR       Employee

FROM:                   Supervisor or Management Official

SUBJECT:               Notice of Reasonable Suspicion Testing for Illegal Drugs

### Select applicable citation:

**(HHS regulated positions):** Pursuant to Executive Order 12564, Drug-Free Federal Workplace, the Department of Commerce (the Department) has initiated a comprehensive program to achieve the goal of a drug-free workplace. This program is set forth in the Department's Drug-Free Workplace Plan.

**(DOT regulated positions):** The Omnibus Transportation Employee Testing Act of 1991 (Public Law 102-143) requires alcohol and drug testing of safety-sensitive employees in the motor carrier industry. On February 15, 1994, the U.S. Department of Transportation and the Federal Highway Administration issued final rules requiring alcohol and drug testing of drivers required to have a commercial driver's license (CDL).

It has been determined by Department officials that sufficient grounds exist to authorize alcohol and/or drug testing on the basis of reasonable suspicion. This test is sought to be performed since management has formed a reasonable belief that you have misused alcohol or using illegal drugs. You are to report to Name of laboratory and location, on day, date and time of test.

**(The supervisor or manager must provide a separate statement outlining all relevant circumstances which formed the basis for the decision to conduct reasonable suspicion drug testing. Include as attachments any witness statements and/or other substantiating documentation to support the requirement for reasonable suspicion drug testing, if available.)**

Drug testing for the Department is performed through urinalysis by a contractor-certified laboratory. The testing methodology reflects the scientific technical procedures necessary to ensure the results are highly reliable and accurate. Certification provides strict quality control procedures. These procedures will include an initial screen of the urine sample you provide for drugs and confirmation by gas chromatography/mass spectrometry.

Collection procedures under reasonable suspicion testing will require you to provide a urine specimen under direct observation. To ensure that the specimen collected from you is not accidentally confused with any other specimen, strict chain of custody procedures will be used when collecting and transferring the specimen. The test results from your specimen will be handled with maximum respect for individual confidentiality consistent with safety and security. A confirmed positive drug test result reported by the laboratory will be reviewed by a Medical Review Officer before a determination is made that you have used illegal drugs. You will be given an opportunity to list all prescription and over-the-counter drugs that could affect the outcome of the drug test and which may be identified through the confirmation procedure.

You can also request a second test at another HHS certified laboratory. In such instances, the laboratory used by the Department will send a portion of the original sample to the laboratory designated by the employee. You will be required to pay for the cost of this test.

If it has been determined that you are misusing alcohol or using illegal drugs by means of this test or any other means, you are subject to disciplinary action up to and including removal from Federal service. An employee found to be misusing alcohol or using illegal drugs will not be permitted to remain on duty in a sensitive position. The services of the Department's Employee Assistance Program (EAP) or a Substance Abuse Professional (SAP) will be made available to you to receive counseling and learn about the availability of rehabilitation. Information concerning the EAP/SAP may be obtained from your immediate supervisor or by contacting your servicing human resources office.

Employees may be returned to safety or security duties when a determination is made that such action would not pose a threat to public health or safety or national security. In addition, unannounced follow-up testing for a period of one year after the return to safety or security duties or completion of a rehabilitation/abatement program, whichever is later, will be required for these employees.

If you have questions after providing a specimen, please contact your servicing human resources office.

Your signature below acknowledges receipt of this notice.

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

NOTE: If an employee/applicant refuses to acknowledge this notice, the appropriate human resources official should certify that the notice was provided to the applicant/employee by signing below.

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Date

Attachment

## **HHS Regulated Positions Only**

MEMORANDUM: For Employee

FROM: Servicing Human Resources Officer

SUBJECT: Specific Notice of Random Drug Testing

Pursuant to Executive Order 12564, "Drug-Free Federal Workplace," the Department of Commerce (Department) has instituted a comprehensive program to achieve the goal of a Drug-Free Workplace. This program is set forth in the Department's Drug-Free Workplace Plan (Plan).

It is the Department's policy to test employees assigned to Testing Designated Positions (TDPs) for illegal drug use. The job functions associated with TDPs have a direct impact on public health and safety, the protection of life and property, law enforcement, or national security. We do not have a signed acknowledgement on file from you indicating you have received notification that you occupy your current TDP, and that random testing of employees receiving this memorandum will begin no sooner than 30 days following the date of this notice. Accordingly, we are sending this memorandum to you as your required notification.

### **Types of Testing**

Under the Plan, the following types of drug testing are used: random testing of employees in TDPs; testing for employees who are suspected of using drugs; testing for employees involved in job-related accidents; follow-up testing for employees who have completed a drug treatment program; and testing for employees who volunteer.

### **Employee Assistance Program (EAP)**

It is the policy of the Department to offer confidential assistance to employees who have personal problems, which may be causing a decline in their job performance, and to encourage these employees to voluntarily seek rehabilitation assistance through the EAP. To the maximum extent possible, the Department will assist employees by referring them for treatment to outside local community programs. If you need assistance, you should contact an EAP counselor or your Servicing Human Resources Office.

### **Disciplinary Consequences**

Employees who test positive, indicate drug usage based on other evidence, or refuse to take a drug test, may be subject to disciplinary action up to and including removal. The Department will not permit an employee found to be using illegal drugs to remain on duty in a sensitive position. If the employee is a qualified individual with a disability, the Department may waive the requirement if the employee's return to a sensitive position would not pose a danger to the public health or safety or to national security.



### **Administrative Relief**

The administrative relief does not apply to bargaining unit employees covered by a negotiated grievance procedure (NGP) unless the NGP specifically excludes the subject of the position designation as a TDP under the Preferred or Presumptive criteria from the scope of the NGP. If the employee believes their position has been wrongly designated as a TDP, that employee may file an administrative appeal with the Chief Financial Officer and Assistant Secretary of Administration (CFO/ASA) or designee. The employee must submit, in writing, an appeal to the CFO/ASA or designee within 15 calendar days of notification, setting forth all relevant information. The CFO/ASA or designee shall review the appeal based upon the criteria applied in designating that employee's position as a TDP. The CFO/ASA's, or designee, decision of the CFO/ASA or their designee is final and may not be grieved under the Department's Administrative Grievance Procedure, DAO 202-711. The decision by the CFO/ASA, or designee, is subject to review and approval by the ICGEC.

### **Relief for Bargaining Unit Employees**

Bargaining unit employees covered by an NGP that does not specifically exclude the issue of designation of a position as a TDP under the Preferred or Presumed criteria from the scope of the NGP must use the NGP. If the matter is referred to the arbitration, either party (management or labor) may file exceptions with the Federal Labor Relations Authority under 5 U.S.C. § 7122. However, a final decision is subject to review and approval by the ICGEC.

Position Title: \_\_\_\_\_

Position Number: \_\_\_\_\_

### ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

This acknowledges that I have received the attached notice entitled “Specific Notice of Random Drug Testing,” **dated** \_\_\_\_\_, which states that my position has been designated for random drug testing. This notice further indicates that my refusal to submit to testing may result in initiation of disciplinary action up to and including removal.

\_\_\_\_\_

Employee Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
This certifies that I presented such notice to \_\_\_\_\_ on \_\_\_\_\_  
and that the above named employee declined to sign this acknowledgement of receipt.

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

MEMORANDUM FOR       Employee

FROM:                   Supervisor or Management Official

SUBJECT:               Notice to Follow-up Testing for Illegal Drugs

When you entered the Department of Commerce (the Department) Employee Assistance Program or other treatment programs, you were advised that you would be subject to follow-up testing for illegal drug use. You are scheduled for follow-up testing today, location, and time. Be prepared to present photo identification to the collector. You will be required to provide a breath specimen or urine specimen of at least 30/45 milliliters under direct observation, depending on the requirements that govern your position.

Drug testing for the Department is performed through urinalysis by a contract-certified laboratory. The testing methodology reflects the scientific and technical procedures necessary to assure the results are highly reliable and accurate. In addition, the laboratory is required to observe strict quality control procedures. These procedures will include an initial screen of the urine sample you provide for drugs and confirmation by gas chromatography/mass spectrometry.

Collection procedures under follow-up testing will require you to provide a specimen under direct observation. To ensure that the specimen collected from you is not accidentally confused with any other specimen, strict chain of custody procedures will be used when collecting and transferring the specimen. The test results from your sample will be handled with maximum respect for individual confidentiality consistent with safety and security. A confirmed positive test result will be reviewed by a Medical Review Officer before a determination is made that an employee has used illegal drugs. You will be given an opportunity to list all prescription and over-the-counter drugs that could affect the outcome of the drug test, and which may be identified through the confirmation procedure.

If you test positive you will be subject to removal. Refusal to submit to testing or failure to cooperate with collection procedures will be grounds for removal from the Federal service. If you have other questions after providing a urine specimen, please contact your servicing human resources office or the Site Coordinator.

Your signature below acknowledges receipt of this notice.

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Signature of Employee/Applicant

\_\_\_\_\_  
Date

NOTE: If an employee refuses to acknowledge this notice, the appropriate human resources official should certify that the notice was provided to the applicant/employee by signing below.

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Date

MEMORANDUM FOR       Employee

FROM:                   Supervisor or Management Official

SUBJECT:               Notice of Post-Accident Testing for Alcohol or Illegal Drugs

**Choose applicable citation:**

**(HHS regulated positions):** Pursuant to Executive Order 12564, Drug-Free Federal Workplace, the Department of Commerce (the Department) has initiated a comprehensive program to achieve the goal of a drug-free workplace. This program is set forth in the Department's Drug-Free Workplace Plan.

**(DOT regulated positions):** The Omnibus Transportation Employee Testing Act of 1991 (Public Law 102-143) requires alcohol and drug testing of safety-sensitive employees in the motor carrier industry. On February 15, 1994, the U.S. Department of Transportation and the Federal Highway Administration issued final rules requiring alcohol and drug testing of drivers required to have a commercial driver's license (CDL).

It has been determined by Department officials that sufficient grounds exist to authorize alcohol and/or drug testing on the basis of an accident, injury or other occurrence since management cannot conclusively determine that your performance at or about the time of the event could not have been a contributing factor. You are to report to Name of laboratory and location, on day, date and time of test.

**[Include information on the event or circumstances which formed the basis for authorizing the post-accident test.]**

Drug testing for the Department is performed through urinalysis by a contract-certified laboratory. The testing methodology reflects the scientific and technical procedures necessary to insure the results are highly reliable and accurate certification provides for strict quality control procedures. These procedures will include an initial screen of the urine specimen you provide for drugs and confirmation by gas chromatography/mass spectrometry.

To insure that the urine specimen collected from you is not accidentally confused with any other specimen, strict chain of custody procedures will be used when collecting and transferring the specimen. The test results from your specimen will be handled with maximum respect for individual confidentiality consistent with safety and security. A confirmed positive test result will be reviewed by a Medical Review Officer before determination is made that an employee has used illegal drugs. You will be given an opportunity to list all prescription and over-the-counter drugs that could affect the outcome of the drug test and which may be identified through the confirmation procedure.

You can also request a second test at another HHS certified laboratory. In such instances, the laboratory used by the Department will send a portion of the original sample to the laboratory designated by the employee. You will be required to pay for the cost of this test.

If it has been determined that you are misusing alcohol or using illegal drugs by means of this test or any other means, you are subject to disciplinary action up to and including removal from Federal service. An employee found to be misusing alcohol or using illegal drugs will not be permitted to remain on duty in a sensitive position. The services of the Department's Employee Assistance Program (EAP) or a Substance Abuse Professional (SAP) will be made available to you to receive counseling and learn about the availability of rehabilitation. Information concerning the EAP/SAP may be obtained from your immediate supervisor or by contacting your servicing human resources office.

Employees may be returned to safety or security duties when a determination is made that such action would not pose a threat to public health or safety or national security. In addition, unannounced follow-up testing for a period of one year after the return to safety or security duties or completion of a rehabilitation/abatement program, whichever is later, will be required for these employees.

Refusal to submit to testing or failure to cooperate with the collection procedures will be grounds for disciplinary action, including, in appropriate cases, removal from the Federal service. If you have other questions after providing a urine specimen, please contact your servicing personnel office.

Your signature below acknowledges receipt of this notice.

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

NOTE: If an employee refuses to acknowledge this notice, the appropriate human resources official should certify that the notice was provided to the applicant/employee by signing below.

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Date

**DOT regulated positions only**

MEMORANDUM FOR Employees Occupying Positions Requiring a Commercial Driver's License (CDL)

FROM: (Bureau Head or Designee)

SUBJECT: Employee Notice of Testing Requirements for Positions Regulated by the Department of Transportation

The Omnibus Transportation Employee Testing Act of 1991 (Public Law 102-143) requires alcohol and drug testing of safety-sensitive employees in the motor carrier industry. On February 15, 1994, the U.S. Department of Transportation (DOT) and the Federal Highway Administration issued final rules requiring alcohol and drug testing of drivers required to have a commercial driver's license (CDL).

It has been determined that your position meets the criteria for inclusion in the testing program mandated by DOT. Therefore, you will be subject to random alcohol and drug testing at any time following receipt of this notice.

You are expected to take the Drug and Alcohol-Free Workplace Program courses, *DOT Drug Testing Regulations for Employees* and *DOT Alcohol Testing Regulations for Employees*, which are available to all employees on the Commerce Learning Center (CLC) web site. You can access the appropriate course by logging in to the CLC website. Once logged in please click on your appropriate bureau web page. On the left side of the page, you will find the "Training and Development" button, click that button and you will be taken to the "Course Listing by Category," and select "Drug Testing."

Attached to this notice are definitions of terms used in the DOT testing program along with information you are required to have. Additionally, your Servicing Human Resources Office (SHRO) (name and telephone number) is the point of contact for any questions you may have about this program.

Your signature below acknowledges you have received and read this notice.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

NOTE: If an employee refuses to acknowledge this notice, the supervisor must certify that the notice was provided to the employee by signing below.

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

Attachments

## Attachment 1

### DEFINITION OF TERMS USED IN THE DOT TESTING PROGRAM

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

**Alcohol use** - The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

**Breath alcohol technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device.

**A 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 of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; (2) has a gross vehicle weight rating of 26,001 or more pounds; (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of hazardous materials requiring placards.

**Driver** - Any person who operates a commercial motor vehicle. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.

**Drugs** - Marijuana, opiates, PCP, amphetamines, and cocaine are the drugs for which tested.

**Employer** - A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel.

**Evidential breath testing device (EBT)** - A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List (CPL) of Evidential Breath Measurement Devices".

**Medical Review Officer (MRO)** - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results together with his or her medical history and any other relevant biomedical information.

**Performing (a safety-sensitive functions)** - Any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.

**Refusal to submit (to an alcohol or controlled substance test)** - A driver: (1) fails to provide adequate breath for testing without a valid medical explanation after they have received notice of the requirement for breath testing; (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after they have received notice of the requirement for urine testing; or (3) engages in conduct that clearly obstructs the testing process.

**Safety-sensitive function** - All on-duty time that a driver performs any of the following functions:

- a. Operating a CMV or waiting to be dispatched,
- b. Remaining in readiness to operate a CMV,
- c. Ensuring the following parts and accessories are in good working order:
  - (1) service brakes, including trailer brake connections
  - (2) parking (hand) brake and steering mechanism
  - (3) lighting devices and reflectors
  - (4) tires, horns, windshield wiper(s)
  - (5) rear-view mirror(s) and coupling devices,
- d. Ensuring the following are in place and ready for use as appropriate:
  - (1) fire extinguisher; fuses and spare fuses
  - (2) warning devices for stopped vehicles
  - (3) emergency reflective triangles
  - (4) red emergency reflectors and red flags,
- e. Inspecting, servicing, or conditioning a CMV,
- f. Loading or unloading; supervising or assisting in the loading or unloading; attending a vehicle being loaded or unloaded; or giving or receiving receipts for shipments loaded or unloaded,
- g. Repairing, obtaining assistance, or remaining in attendance with a CMV,
- h. Being on or upon a CMV, except time spent in a sleeper berth,
- i. Being involved in an accident resulting in injury or death of person(s) or any amount of property damage, including rendering reasonable assistance to injured persons; providing name, address, etc., to any person demanding the same; and reporting the accident, or
- j. Hitting an unattended vehicle standing upon a highway, taking reasonable efforts to locate the custodian of the vehicle, and placing name, address, and bureau identification on the standing vehicle.



## Attachment 2

### ANSWERS TO COMMONLY ASKED QUESTIONS ABOUT ALCOHOL AND DRUG TESTING REQUIREMENTS FOR COMMERCIAL MOTOR VEHICLE DRIVERS

#### 1. Which drivers are subject to alcohol misuse and controlled substance requirements?

Drivers required to have a commercial driver's license (CDL) are subject to the Federal controlled substance and alcohol testing rules. A CDL is required for drivers operating a commercial motor vehicle (see definition in Attachment 1). The rule includes both inter- and intrastate truck and motor coach operations.

#### 2. What drivers are exempt from Federal controlled substance and alcohol testing rules?

- a. drivers exempted by their issuing state from CDL requirements;
- b. drivers of vehicles less than 26,000 pounds GVWR, required by their state to possess a commercial driver's license;
- c. drivers whose place of reporting for duty (home terminal) is located outside the territory of the United States; and
- d. active-duty military personnel.

#### 3. What constitutes prohibited alcohol and controlled substance-related conduct?

- a. Reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater;
- b. Being on duty or operating a CMV while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter), unless the packaging seal is unbroken;
- c. Using alcohol while performing safety-sensitive functions (see definition in Attachment 1);
- d. When required to take a post-accident alcohol test, using alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever, comes first;
- e. Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion, return-to-duty, or follow-up testing requirements;
- f. Reporting for duty or remaining on duty, requiring the performance of safety-sensitive functions, when the driver uses any controlled substance, except when instructed by a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV; and

g. Reporting for duty, remaining on duty or performing a safety-sensitive function, if the driver tests positive for controlled substances.

4. Under what circumstances will a driver be tested for alcohol and/or controlled substances?

a. **Pre-employment testing** - prior to the first time a driver performs safety-sensitive functions for an employer, they shall undergo testing for controlled substances. Pre-employment alcohol testing is currently suspended.

b. **Post-accident testing** - as soon as practicable following an accident involving a CMV, the employer shall test each surviving driver for alcohol and controlled substances, if: (1) the accident involved the loss of human life; or (2) the CMV driver receives a citation under State or local law for a moving traffic violation arising from the accident.

c. **Random testing** - unannounced and spread reasonably throughout the year. There are two types of random tests administered. Random **alcohol** tests may only be administered while the driver is performing safety-sensitive functions, or just before the driver performs safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions. Random tests for **controlled substances** may be administered anytime the driver is on duty.

d. **Reasonable suspicion testing** - A driver shall be required to submit to an alcohol or controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions for alcohol and controlled substances.

e. **Return-to-duty testing** - A driver found to have engaged in prohibited conduct shall submit to return-to-duty testing.

f. **Follow-up testing** - Following a determination that a driver is in need of assistance, follow-up testing shall be performed on a returning driver as follows:

- (1) as deemed necessary by an EAP Counselor;
- (2) tested a minimum of six times in the first 12 months;
- (3) shall not exceed 60 months of follow-up testing; and
- (4) may be terminated at any time by the SAP following the initial 6 tests.

5. What procedures will be used to test for the presence of alcohol and controlled substances?

a. **Alcohol test procedures** - A breath alcohol technician (BAT) will administer breath alcohol testing using an evidential breath testing device (EBT) that meets National Highway Traffic Safety Administration's standards as indicated by their Conforming Products List.

b. **Controlled substances (drug) testing procedures** - A collection contractor will collect 45 milliliters of urine from the driver. The specimen will be sent to a certified laboratory to test for the presence of marijuana, opiates, PCP, amphetamines, and cocaine. The driver will have an opportunity to provide information to a Medical Review Officer that a positive result occurred for legal reasons.

6. When must an employee be removed from performing safety-sensitive functions?

a. Drivers who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. Drivers who have engaged in alcohol misuse cannot return to safety-sensitive duties until they have been evaluated by a substance abuse professional and complied with any treatment recommendations to assist them with an alcohol problem. To further safeguard transportation safety, drivers who have an alcohol concentration of 0.02 or greater, but less than 0.04 when tested just before, during or just after performing safety-sensitive functions must also be removed from performing such duties for 24 hours. If a driver's behavior or appearance suggests alcohol misuse, a reasonable suspicion alcohol test must be conducted. If a breath test cannot be administered, the driver must be removed from performing safety-sensitive duties for at least 24 hours.

b. As with an alcohol misuse violation, a driver must be removed from safety-sensitive duty if he/she has a positive drug test result. A driver cannot be returned to safety-sensitive duties until the MRO has interviewed the driver and determined that the positive drug test resulted from the unauthorized use of a controlled substance; and the driver has been evaluated by a substance abuse professional or MRO, has complied with recommended rehabilitation, and has a negative result on a return-to-duty drug test. Follow-up testing to monitor the driver's continued abstinence from drug use is required for on-board employees.

7. What disciplinary action is mandated by the DOT regulations for positive test results?

The DOT regulations do not require a specific disciplinary action to be taken. Possible appropriate action may include reprimand, suspension, demotion, or removal for a positive drug test. Bureaus must consult with their SHROs and General Counsel with respect to any disciplinary action.

**NOTE:** The Rehabilitation Act of 1973, as amended, must be considered when proposing disciplinary actions.

8. What if initiation of removal conflicts with the Act?

The provisions of the Act are controlling.

9. Given the answer to number 7 above, are bureaus prevented from initiating removal action for the first positive test result?

No. As stated above, disciplinary action is governed by the specific facts of each case.

10. What are the effects of alcohol and controlled substances on work and behavior, signs and symptoms of an alcohol or controlled substances problem, and the role of an employee assistance program?

a. The following describes changes in the work and behavior patterns that are frequently associated with excessive drinking or drug abuse behavior:

- (1) a pattern of absenteeism develops (i.e., after payday, before or after holidays, or weekends) or excuses are offered (i.e., colds, flu, bronchitis, sore throats, peculiar accidents, family problems);
- (2) unexplained irritability or resentment;
- (3) wage attachments or other involvement with the law;
- (4) deteriorating personal appearance;
- (5) odor of alcohol on breath (often covered by breath fresheners) or smell of burnt rope;
- (6) "drinking lunch" and prolonged lunch hours;
- (7) frequent disappearances at coffee breaks, frequent trips to the lavatory, with subsequent changes in physical/behavioral characteristics such as those described herein;
- (8) poorer judgment;
- (9) increasing complaints from fellow employees, supervisors;
- (10) tardiness and early departure;
- (11) drinking or drugging on the job;
- (12) withdrawing from interaction with co-workers;
- (13) avoiding/withdrawing from responsibility; or
- (14) unusual patterns of behavior.

b. The following describes signs and withdrawal symptoms of alcohol and controlled substances use:

- (1) **Narcotics** (heroin, dilaudid, methadone) - Signs of use include nodding, small pupils, skin scars, euphoria, nausea, and scratching. Withdrawal symptoms include watery eyes, runny nose, irritability, tremors, cramps and nausea.
- (2) **Depressants** (alcohol, barbiturates, xanax, quaaludes) - Signs of use include slurred speech, drowsiness, drunken behavior with no odor of alcohol, slowed reactions, mood swings, and impaired judgments. Withdrawal symptoms include anxiety, insomnia, tremors, and convulsions.
- (3) **Stimulants** (amphetamines, cocaine, crack) - Signs of use include runny nose, increased alertness and initiative, euphoria, loss of appetite, mood swings, borrowing money, decreased sexual performance/drive and depression-irritability. Withdrawal symptoms include agitation, depression (can be severe), and disorientation and sleep disturbance.
- (4) **Hallucinogens** (LSD, peyote, mescaline, PCP) - Signs of use include blank expression, staring, appearing drugged, hallucinations (sight, sound, taste, smell), poor perception (time and distance), restlessness, violent/hostile behavior, personality changes (unpredictable), psychosis, insensitivity to pain, and rapid and involuntary eye movement. Withdrawal symptoms include depression, irritability, alienation from surroundings and flash backs.
- (5) **Cannabis** (marijuana, hash, hash oil) - Signs of use include reddening of eyes, euphoria, forgetfulness (short-term memory deficits), increased appetite, altered perception of time and distance, disoriented behavior, anxiety/paranoia and motivational syndrome. Withdrawal symptoms include sleep loss and disturbance, irritability, restlessness, hyperactivity, decreased appetite, sweating, sudden weight loss and increased salivation.

c. The Employee Assistance Program (EAP) provides short-term professional counseling services. The counseling is confidential and free of charge to all employees. No names or any identifying information can be provided to the agency unless the employee signs a written statement authorizing the counselor to do so. Any employee may call an EAP counselor directly for assistance; however, in some situations where an employee is performing at an unacceptable level, or, engaging in unacceptable conduct, a supervisory referral is appropriate. The counselor will assess the problem and refer the employee to the appropriate treatment. The counselor will assist the employee with return to duty requirements, as required.