

Internal Operations Manual

SUBJECT: Alcohol & Drug Testing for Commercially Licensed Drivers

NUMBER: 107-00-030

DIVISION: Operations Division - Personnel

EFFECTIVE DATE: 09-10-03

APPROVED:



**POLICY/
PURPOSE:**

The purpose of this policy is to implement the Omnibus Transportation Employee Testing Act of 1991 and Title 49, parts 40 and 382 of the Code of Federal Regulations (CFR) which requires the Department of Administrative Services (DAS) to conduct a drug and alcohol-testing program. Under this Act, DAS is required to establish certain rules and follow certain procedures related to employees who are required in the course of their employment to hold a commercial drivers license (CDL).

AUTHORITY:

Omnibus Transportation Employee Testing Act of 1991 (OTETA), 49 CFR part 382, 49 CFR part 40, OAR 105-50-004.

APPLICABILITY:

All Department of Administrative Services employees whose duties require the possession of a CDL.

ATTACHMENTS:

Exhibit A - Letter of Agreement with OPEU
Exhibit B – Employee Certification Form

DEFINITIONS:

ALCOHOL: The intoxicating agent in beverage, alcohol, ethyl alcohol, or other low molecular wither alcohols, including methyl or isopropyl alcohol

DRUGS: the drugs for which tests are required under this part and Department of Transportation (DOT) agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP) and opiates.

SAFETY-SENSITIVE FUNCTION: All work from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.

GUIDELINES:
EMPLOYEE TESTING

- A. Substance abuse testing outlined in this policy may be conducted pre-employment, on a reasonable suspicion basis, random, or on a safety issue.
- B. Alcohol testing may only be conducted immediately before, during, or after a covered employee performs a safety-sensitive function.

II. TYPES OF TESTING

As required by federal regulations, the following types of drug and alcohol tests shall be performed with respect to covered employees:

GUIDELINES: (Continued)

- A. **PRE-EMPLOYMENT TESTING** - Conducted after a conditional offer to hire, but before actually performing safety-sensitive functions for the first time. It is also required when employees promote, demote or transfer to safety-sensitive positions.

Licensed commercial drivers applying for a safety sensitive position will be asked to consent to a check of their drug and alcohol testing records from the Oregon Department of Motor Vehicles and other state motor vehicle departments. If the applicant refuses to consent to the federal or state history check, the offer for employment shall be withdrawn.

- B. **RANDOM TESTING** - Conducted on a random unannounced basis throughout the year. "Alcohol tests" are conducted immediately before, while, or immediately after the employee performs a safety-sensitive function. "Drug tests" may be conducted at any time during work hours. Selection of employees for random testing will be done by the contractor through a scientifically valid computer-generated random number selection system. Employees from all agencies (except Oregon Department of Transportation (ODOT) affected by the rules are in the random pool. Fifty (50) percent of the names in the pool must be drawn annually for drug testing and twenty-five (25) percent for alcohol testing.
- C. **REASONABLE SUSPICION TESTING** - Conducted when a trained supervisor determines that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.
- D. **POST-ACCIDENT TESTING** - Conducted after an accident by an employee whose performance could have contributed to the accident, as determined by a citation for a moving traffic violation, fatality, bodily injury or significant property damage.
- E. **RETURN-TO-DUTY TESTING** - Conducted after an employee tests positive for alcohol misuse or controlled substance use and before they return to work. Alcohol test results of .04 or greater, or refusal to submit to a test, require return-to-duty testing.
- F. **FOLLOW-UP TESTING** - Conducted after an employee is allowed to return to a safety-sensitive function. This employee will be subject to at least six unannounced follow-up tests in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months.

III. COST OF TESTING

All costs associated with testing, including follow-up testing and split specimen testing, shall be paid by DAS. Any testing ordered by the employee shall be at the employee's expense.

IV. PROHIBITED CONDUCT

The following conditions and activities are expressly prohibited:

- A. Performing any safety-sensitive functions while using alcohol, while possessing alcohol, or while having an alcohol concentration of .02 percent or greater, or within four hours after

PROHIBITED CONDUCT: (Continued)

using alcohol. Federal Highway Administration (FHWA) regulations list alcohol concentration of .04 or greater under "prohibitions" (382.201). This policy, under separate authority, lowers that level to .02 or greater.

- B. To report for duty or remain on duty in a position that requires the performance of a safety-sensitive function when the employee has used any controlled substance(s), or after testing positive for controlled substance(s), in the case of prescription medication the employee may provide documentation from a medical provider that the substance does not adversely affect the employee's ability to perform a safety-sensitive function. The employer will make a determination on the employee's ability to perform safety related functions.
- C. Refusing to be tested, which includes refusal to cooperate with testing, failure to report to test site within allotted time, failure to remain available for post-accident testing and attempts to alter specimens or otherwise affect testing results.
- D. Using alcohol within eight hours after an accident that would require post-accident testing or before a post-accident test (whichever comes first).

V. CONSEQUENCES OF PROHIBITED CONDUCT

Covered employees who have engaged in prohibited conduct shall be subject to one or more of the following consequences:

- A. Immediate removal from safety-sensitive duties for at least 24 hours.
- B. Temporary assignment to non-safety-sensitive duties or placed on leave in accordance with agency leave policy.
- C. Return to safety-sensitive duties only after evaluation by a Substance Abuse Professional (SAP), and completion of any necessary rehabilitation and return-to-duty testing. Exception: employees who had an alcohol concentration of .02 to .039 may be allowed to return to safety-sensitive duties after removal for at least 24 hours.
- D. Appropriate disciplinary action up to and including dismissal.

VI. TESTING PROCEDURES

DRUG TESTING

- A. Drug testing is conducted in compliance with Federal Regulations and uses a certified drug testing facility. The employer reserves the right to obtain additional documentation.
- B. Alcohol testing is conducted in compliance with Federal Regulations and uses a certified alcohol testing facility. The employer reserves the right to obtain additional documentation.

GUIDELINES: (Continued)

C. CONFIDENTIALITY OF TEST RESULTS

- a. Employee alcohol and drug testing records are maintained under strict confidentiality by the State of Oregon (DAS Personnel office), the drug-testing laboratory, the alcohol testing facility, and the Medical Review Officer (MRO). The results will not be released to any other party, except a substance abuse professional, without the written consent of the employee.
- b. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation, or administrative proceedings arising from a positive drug or alcohol test or other violation of these rules.

D. USE OF LEAVE TIME

- a. An employee will be granted agency time for random, reasonable suspicion, post-accident and return-to-duty testing. This includes time traveling to and from the test site if travel is required.
- b. The employer may allow an employee who tests positive in a random, reasonable suspicion or post-accident test to use any accrued leave when removed from their position.

VII. TRAINING

DAS will ensure that all:

- a. Supervisors
- b. Managers
- c. Staff who are to determine whether reasonable suspicion exists to require an employee to be tested
- d. And employees who perform safety-sensitive job functions

are trained for a minimum of two hours on the effects and consequences of prohibited drug and alcohol use on personal health, safety and the work environment. The training will also include the manifestation and behavioral signs that may indicate prohibited use. Additional training will be given periodically to keep employees up-to-date on the alcohol and drug-testing program. Employees in safety-sensitive positions must be provided copies of this policy and educational material on meeting procedures required in this policy.

All Covered employees will receive training and/or education materials on the effects of alcohol and controlled substances on a person's health, work and personal life; signs and symptoms of an alcohol or controlled substance problem; and available methods of intervention when an alcohol or controlled substances problem is suspected.

GUIDELINES: (Continued)

VIII. PRESCRIPTION MEDICATIONS AND OVER THE COUNTER DRUGS

Employees are responsible to report to work free from the effects of any controlled substance or alcohol. Covered employees must report to their immediate supervisor the use of prescriptions and over-the-counter drugs that could have a disabling effect or otherwise adversely affect the covered employee's fitness for duty or job performance. It is the covered employee's responsibility to ask the physician, pharmacist, or other health care professionals if the prescribed or over-the-counter drugs could affect the covered employee's fitness for duty, impair job performance, or if the medication is listed on the prohibited controlled substance listing as published by the Department of Transportation. Covered employees may be required to provide a written medical authorization to work from a physician upon reporting the use of prescription or over-the-counter drugs that have disabling effects or otherwise affect the covered employee's fitness for duty while at work. Failure to provide sufficient documentation of medical authorization to work may result in reassignment to a non-safety sensitive function or discipline.

PROCEDURES:

Step Responsible Party Action

1. Employee Reports to work fit for duty and refrains from the use of controlled substances both on and off the job and the misuse of alcohol as stated in this policy. Receives a copy of this policy. Attends training as outlined in this policy.

Provides information to supervisors about prescribed medications that may impair their ability to perform assigned duties. Complies with alcohol and drug testing when requested in accordance with the provisions of this policy and federal regulations. *When an employee is notified that they are selected for a random test, the employee must cease work, consistent with safety, and proceed to the testing location as soon as possible.* (Supervisors may not give the affected employee any advance notice of the test.)

Participates in training, which explains the provisions of this policy, specific responsibilities and how to recognize behaviors, which may indicate substance abuse.

2. Supervisor Provides employee with a copy of this policy and educational materials which explain the DAS policy, the testing program and rehabilitation services available.

Directs employees in designated safety-sensitive positions to comply with the provisions of the Alcohol and Drug Testing policy.

Determines through direct observation whether an employee is capable of performing his or her assigned duties. Determinations shall be based on specific timely, articulate, and reliable observations concerning the

PROCEDURES: (Continued)

Supervisor
(Continued)

appearance, behavior, speech or body odor of the employee. If reasonable suspicion exists, takes necessary action(s) as stated in this policy and immediately brings his/her observations to the attention of the Personnel Manager or Safety Consultant before proceeding with actions required by this policy.

If the employee is observed as not being capable of performing his/her duties; documents behavior, removes employee from the work place and sees that the employee gets home safely. After the employee is removed from the safety-sensitive duties or removed from the work place; discusses the specifics of the situation with Personnel Office staff to review appropriate disciplinary action. Each situation will be evaluated on a case-by-case basis. Arranges for random testing of subordinates in accordance with testing procedures provided by the contractor.

3. Safety Consultant

Participates in the training that explains this policy, specific responsibilities, and how to recognize behaviors that may indicate substance abuse. Promotes a drug/alcohol free workplace by circulating materials which inform employees, supervisors and managers of the effects of drug/alcohol impairment in the workplace and behavioral symptoms of impairment.

Manages the activities of the Contractor who is to carry out the sample selection, collection and testing, MRO services, reporting of results, SAP services, and record keeping. This person shall be available twenty-four hours per day to assist the contractor when a positive test result is reported.

Receives the test results from the Contractor and confidentially maintains them. Confidentially reports the test results to the employee tested and strictly limits knowledge of results to those who have a need to know (e.g. may include an immediate supervisor or Personnel Office staff).

4. Personnel Manager

Maintains responsibility for program management and will be on call when Safety Consultant is unavailable.

Assures that all finalists for hire into a safety sensitive position complete pre-employment drug testing.

Assures that positions requiring a CDL have an approved statement included in the job announcement and position description that covers the requirements of alcohol and drug testing.

Assures that all CDL holders are trained in their responsibilities to this program and are provided with a copy of this policy during orientation.

PROCEDURE: Continued

EMPLOYEE CERTIFICATION FORM

Each employee working in a position covered by the drug and alcohol testing program is required to sign an Employee Certification Form (*Exhibit B*) certifying that they have received a copy of the policy, training was provided, and the time and opportunity was given to ask questions regarding the policy.

The Employee Certification Form (*Exhibit B*) certifies that the named employee received a copy of the DAS Alcohol and Drug Testing for Commercially licensed Drivers policy # 107-04-030 and was given the opportunity to clarify any questions they may have about this policy. This policy is the basis for implementing the requirements of the United States Department of Transportation Federal Motor Carrier Safety Administration rules and regulations pertaining to alcohol and controlled substances testing of covered employees.

LETTER OF AGREEMENT 00.00-99-48

CDL - Drug Testing

This Agreement is by and between the State of Oregon, through its Department of Administrative Services, hereinafter called the "Employer," on behalf of the Department of Transportation, Department of Forestry, Department of Education, Department of Administrative Services, Department of Agriculture, Oregon State Hospital and Parks and Recreation Department, hereinafter called the "Agency" and the SEIU Local 503, OPEU hereinafter called the "Union."

The parties agree to the following:

Section 1. Application.

This Agreement covers all SEIU Local 503, OPEU-represented employees who are required to possess a commercial driver's license and perform safety-sensitive functions in all agencies where the Union is the bargaining agent. This Agreement is specifically limited to meeting the alcohol and drug testing requirements pursuant to Federal Department of Transportation regulations for CDLs and applicable law.

Section 2. Term of Agreement.

This Agreement ends June 30, 2003 except as otherwise noted.

Section 3. Payment for Testing.

Agencies will pay for random, reasonable suspicion, post-accident and return to duty testing. If an employee wants additional tests conducted, the employee pays for the test. As used herein, a drug test may include both the initial test and confirmation of a single specimen.

Where an employee with a positive alcohol/drug test result is offered a last chance agreement by the Agency, which the employee signs, the Agency will pay for the first six follow-up tests required by the certified substance abuse professional.

Section 4. Pre-Employment Testing.

A pre-employment drug test will be conducted under the following conditions, except where conditions listed in Part 382.301(b)(c) are met:

- a. New hire to the agency, unless the employee meets the requirements outlined in the regulations.
- b. Return from layoff.
- c. Reemployed as a seasonal employee.
- d. Promotions, demotions and transfers where the employee moves into a position that requires a commercial driver's license.
- e. Where an employee possesses a commercial driver's license and receives a new assignment requiring the possession of a CDL yet does not change positions.

Section 5. Consequences of Positive Tests.

When an Agency receives notice of an employee's positive test, the Agency will take one or more of the following actions in addition to removing the employee from safety-sensitive functions.

- a. Random, Reasonable Suspicion and Pre-Employment Tests.
 1. Temporarily assign the employee to non-safety-sensitive functions;
 2. Allow an employee to take accrued leave or leave without pay pursuant to the requirements of the Agreement if the Agency does not assign non-safety-sensitive functions;
 3. Refer the employee to rehabilitation and last chance agreement;
 4. Take disciplinary action pursuant to the requirements of the Agreement.

In the case of pre-employment testing for promotions, demotions or transfers where the employee is moving from a position that does not require a CDL to a position that requires a CDL, an additional option is to rescind the appointment.

b. Post Accident, Follow-Up and Return to Duty Testing.

This Agreement does not waive employee rights under Part 382.505 as it applies to alcohol test results of 0.02 to 0.039.

The parties acknowledge that an Agency, at its own discretion, may decide to offer a last chance agreement to an employee as an alternative to termination. However, nothing in the Master Agreement or this Agreement shall preclude an Agency from issuing a lesser form of discipline in conjunction with offering a last chance agreement. Last chance agreements will not include blood testing or additional follow-up testing not required by the certified substance abuse professional. The duration of a last chance agreement shall be for a period of 5 years starting from the effective date of the last chance agreement. After the 5-year period, the last chance agreement will be removed from the employee's personnel file.

Section 6. Use of Leaves.

- a. An employee will be granted Agency time for actual testing, traveling to and from the test site if such travel is required and for meeting with the medical review officer if such meeting is necessary.
- b. An employee who tests positive in a random, reasonable suspicion or post-accident test can use any accrued leave or leave without pay pursuant to the terms of the Agreement when removed from his/her position when the Agency does not assign the employee non-safety-sensitive functions to perform.
- c. An employee can use accrued leave or leave without pay pursuant to the terms of the Agreement to enroll in and participate in a rehabilitation program and for meeting with the certified substance abuse professional if such meeting is required.
- d. If test results are later found to be negative, and the employee used accrued leave when removed from a safety-sensitive function, the employee's leave accrual balance will be restored.

Section 7. Refusal to Test. An employee will be terminated pursuant to the requirements of the Agreement.

Section 8. Definition of "Accident" for Purposes of Post-Accident Testing. The definition of "accident" shall be the same as the definition contained in Part 390.5 of the Federal Regulations. Post-accident testing shall be limited to the driver of the commercial motor vehicle pursuant to Part 382.303(a) of the federal regulations.

Section 9. Status of Person on Return from Layoff and Seasonal Rehire. The consequences for a person on a return from a layoff list or seasonal rehire list as a result of a positive test will be the following:

a. Return from Layoff.

1. Alcohol test results of 0.04 or greater or a positive drug test. Upon notice from the employee, the Agency will consider that he/she exercises his/her one right of refusal under the Agreement and continues on the list pursuant to the terms of the Agreement.
2. Alcohol test results of less than 0.04. The Agency will require that the employee take a return to duty test. If the test is negative, the person will be hired. If the alcohol test is positive, the employee will notify the Agency that he/she is exercising his/her one right of refusal under the Agreement and will continue on the list pursuant to the terms of the Agreement.

b. Seasonal Rehire.

1. Alcohol test result of 0.04 or greater or positive drug test. The person will not be rehired, but can reapply under reemployment conditions.
2. Alcohol test results of less than 0.04. The Agency will require that the person take a return to duty test. If the test is negative, the person will be hired. If the test is positive, the person will be denied the position and can reapply under reemployment conditions.

Section 10. Employees Authorized to Require Reasonable Suspicion Testing. In addition to supervisors, an OIU Local 503, OPEU-represented employee may be assigned to require reasonable suspicion testing of an employee only when:

1. The employee has been formally assigned in writing to perform the responsibilities of a management service position, and,
2. The employee has been trained to determine "reasonable suspicion" in accordance with the Federal regulations covering alcohol and drug testing for commercial drivers.

Section 11. Requested Written Information

1. Upon request of the affected employee or Union representative, the Agency will provide to the affected employee or Union representative written verification of a positive drug test after the Agency receives such written verification of a positive drug test.
2. The number of random drug tests conducted and the number of positive drug tests will be sent to the Union on a quarterly basis.
3. Upon the Union's written request, the Agency will obtain from the State Contractor, the location of prior random drug testing for the previous calendar quarter for the Agency for which the Union seeks such information. The Union shall pay any costs associated with obtaining the information requested by the Union.

Employee Certification Form

This form certifies that the employee named below received a copy of the DAS Alcohol and Drug Testing for Commercially licensed Drivers policy # 107-04-030 and was given the opportunity to clarify any questions they may have about this policy. This policy is the basis for implementing the requirements of the United States Department of Transportation Federal Motor Carrier Safety Administration rules and regulations pertaining to alcohol and controlled substances testing of covered employees.

Employee Name (Print)

Date

Employee Signature

Supervisor Name (Print)

Date

Supervisor Signature