

CITY OF PHILADELPHIA

DRUG AND ALCOHOL TESTING POLICY FOR OPERATORS OF COMMERCIAL VEHICLES

I. PURPOSE OF THE POLICY

In order to promote safety and prevent accidents and injuries resulting from the misuse of alcohol or the use of controlled substances by the operators of commercial vehicles, and to conform to federal law and the regulations promulgated by the Department of Transportation's Federal Highway Administration (49 CFR part 382), the City of Philadelphia adopts the following drug and alcohol testing program.

II. WHO IS COVERED BY THE POLICY

This Drug and Alcohol Testing Policy shall apply only to City employees who are required by their job to have a commercial driver's license and operate commercial vehicles on a regular, casual, intermittent, or occasional basis for the City of Philadelphia. This Drug and Alcohol Testing Policy applies to those employees who are required by their job to have a commercial driver's license and who are actually performing, or are ready to perform, or immediately available to perform any safety sensitive function described in the next section. Those employees covered by this policy shall be referred to as "covered employees" throughout this policy. For the purposes of this policy, covered employees include both permanent operators, relief operators, and employees who are on-call to operate commercial vehicles.

Commercial vehicles are those vehicles that:

1. have a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of 26,001 or more pounds;
2. have a gross vehicle weight rating of 26,001 or more pounds; or
3. are designed to transport 16 or more people, including the driver; or
4. are used in the transportation of materials found to be hazardous under the Hazardous Materials Transportation Act (and which require the vehicle to be placarded under 49 CFR part 172, subpart F).

III. EMPLOYEES WHO PERFORM SAFETY SENSITIVE FUNCTIONS SUBJECT TO THE TESTING PROVISIONS OF THIS POLICY

Employees required to possess a Commercial Driver's License, and assigned to operate a commercial vehicle on a regular, casual, intermittent or occasional basis are subject to the testing provisions of this policy when performing, or are ready to perform, or immediately available to perform any of the following safety sensitive functions:

1. operating or being ready or on-call to operate a commercial motor vehicle;
2. being in or upon any commercial motor vehicle;
3. inspecting, servicing, or conditioning any commercial motor at any time;
4. inspecting service brakes (including trailer brake connections), parking (hand) brakes, steering mechanism, lighting devices and reflectors, tires, horns, windshield wipers, rear vision mirrors, coupling devices, fire extinguishers, spare fuses, and warning devices for stopped vehicles;
5. supervising, assisting, or attending the loading or unloading of a commercial motor vehicle;
6. repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

IV. REQUIRED PARTICIPATION

Those City employees who operate commercial vehicles on a regular, casual, intermittent, or occasional basis for the City of Philadelphia are required to participate in and comply with the City's drug and alcohol testing program by both federal law and this policy.

Each City employee who is covered by this policy will be notified of same and provided with a copy of this policy when they first become subject to the policy. Generally, covered employees are persons employed in the job titles attached to this policy as "Appendix A," provided that they meet all other requirements of an employee subject to drug and alcohol testing pursuant to 49 CFR Part 382.

Appendix "A" may be periodically updated by the City to encompass changes in job titles or position descriptions.

1. PROHIBITED CONDUCT

Covered employees are prohibited from the following conduct which results in positive test results or test results indicating prohibited conduct under this policy:

1. using illicit drugs, such as marijuana, cocaine, opiates (including heroin), amphetamines, and phencyclidine (PCP);
2. using any of the above controlled substances, unless a physician has both prescribed the use of the controlled substance to the employee and has also advised the employee that the substance does not adversely affect his or her ability to safely operate a commercial vehicle;
3. reporting to work or performing safety-sensitive functions if he or she has consumed any alcohol within the prior four (4) hours;
4. consuming alcohol while performing safety-sensitive functions;
5. reporting for duty or remaining on duty while having an alcohol concentration of 0.02 or greater;
6. possessing any alcohol, on the employee's person or City premises or vehicles, while on duty or operating a commercial motor vehicle;
7. using alcohol for eight (8) hours following an accident involving a commercial motor vehicle, or until he/she undergoes a post-accident alcohol test, whichever occurs first;
8. refusing to submit to a post-accident alcohol or controlled substances test; a random alcohol or controlled substances test; a reasonable suspicion alcohol or

controlled substances test; or a return-to-duty or follow-up alcohol or controlled substances test;

9. tampering with a breath or urine sample or otherwise engaging in conduct which clearly obstructs an alcohol or drug test.

V. TYPES OF REQUIRED DRUG AND ALCOHOL TESTS

Beginning January 1, 1995, there are six (6) situations where covered employees may be required to undergo drug and alcohol testing under this policy. Those situations are:

A. Pre-employment/pre-promotion testing.

1. Prior to the first time that a driver performs safety sensitive functions (whether after initial hire, by promotion, or assignment), the driver shall undergo testing for alcohol and controlled substances.

2. If, during pre-employment testing/pre/promotion an individual is determined to have an alcohol concentration level of 0.02 or greater but less than 0.04, he or she shall be considered to have declined the position under consideration. Three such declinations will result in his or her removal from that eligible list.

3. If, during pre-employment/pre-promotion testing, an individual is determined to have an alcohol concentration level at or above 0.04 or an individual is determined to have tested positive for controlled substances, he or she shall be removed from that eligible list. In addition, if the individual is already employed in a covered position by the City, the results of the pre-promotion test will be treated as a positive result for purposes of this policy.

B. Post-accident testing.

1. As soon as practicable following an accident involving a commercial motor vehicle, the surviving driver shall be tested for alcohol and controlled substances if:

- a) the accident involved the loss of human life; or
- b) he or she receives a citation for a moving traffic violation arising from the accident.

Accidents that don't result in either of the above-mentioned conditions may result in reasonable suspicion testing as described in sub-section "C".

2. All post-accident alcohol testing should be administered within two (2) hours following the accident and must be administered within eight (8) hours following the accident. All post-accident testing for controlled substances must be administered within 32 hours following the accident.

- a) No employee shall be permitted to return to work in a safety-sensitive function until the post-accident tests results are finalized. If the post-accident test results are negative, the employee will be carried in pay status. However, if the test results are positive, the employee will not have been carried in pay status for the period awaiting the test results. Depending upon the employee's condition, the employee may be re-assigned to non-safety sensitive functions pending the finalization of the test results.

3. A covered employee who is involved in an accident while operating a commercial motor vehicle shall inform his or her supervisor of the accident as soon as practicable and shall remain readily available for drug and alcohol testing. The employee will be accompanied by a supervisor to the site designated for drug and/or alcohol testing. Failure to notify a supervisor of an accident may be viewed as a violation of Section VII of the Policy.

4. Nothing in this section shall:

- a) require the delay of necessary medical attention for injured people following an accident; or
- b) prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain necessary emergency assistance or medical care.

C. Reasonable suspicion testing.

1. At any time during the work period, any supervisor who has been trained in accordance with Department of Transportation regulations, shall require a covered employee to submit to a drug and/or alcohol test when the supervisor has reasonable suspicion to believe that the covered employee has violated the prohibitions of this policy concerning alcohol or use of controlled substances.

a) The supervisor's determination that reasonable suspicion exists to require the covered employee to undergo a drug and/or alcohol test must be based on specific, contemporaneous, articulated observations concerning the appearance behavior, speech or odors of the driver and must be documented in accordance with applicable federal regulations. The observations may include indications of the chronic and withdrawal effects of controlled substances.

b) A written record shall be made of the observations leading to a reasonable suspicion test(s), and signed by the supervisor who made the observations, within 24 hours of the observed behavior or before the results of the reasonable suspicion test(s) are released, whichever is earlier.

c) Reasonable suspicion alcohol testing will be performed only if the required observations are made during, just preceding or just after the period of the work day that the driver is required to be in compliance with this part. A driver may only be directed to undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

2. The covered employee may consult with and obtain the assistance of a union representative concerning reasonable suspicion testing, provided such consultation or assistance does not prevent the employee from being administered the drug and/or alcohol test within a timely fashion.

a) Reasonable suspicion testing should be conducted within two (2) hours of the supervisor's initial referral for testing and must be conducted within eight (8) hours of the initial referral. If a test cannot be administered within eight (8) hours, attempts to administer the test shall cease, and the reasons for not administering the test will be recorded.

b) No driver shall report for or remain on duty while required to perform safety-sensitive functions while the driver is impaired by the influence of alcohol or controlled substances, as shown by the behavioral, speech and performance indicators of alcohol or drug misuse. Supervisors will not permit any employee demonstrating such impairment to perform or continue to perform safety-sensitive functions, until:

(1) an alcohol test is administered and the employee's alcohol concentration level measures less than .02; or

(2) twenty-four (24) hours from the initial determination of reasonable suspicion, which ever is sooner.

c) If the employee is required to submit to a reasonable-suspicion drug test, he shall not be permitted to work at any safety-sensitive function until the drug tests are finalized. If any employee's physical condition permits, the employee may be reassigned to non-safety sensitive functions pending receipt of the final test results.

3. The supervisor who makes the determination that reasonable suspicion exists to conduct a drug and/or alcohol test shall not conduct the alcohol test of the covered employee, though the supervisor can transport the employee to the testing site.

4. Supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo reasonable suspicion testing shall receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substance use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

D. Random testing.

1. Unannounced random testing is required on a certain percentage of covered employees each year, as determined by the Federal Highway Administration. In addition, the dates for administering random alcohol and controlled substances tests shall be spread reasonable throughout the calendar year. The Federal Highway Administration has set the current minimum annual percentage rate for random alcohol testing at 25 percent of the average number of covered employees. The

Federal Highway Administration has set the current minimum annual percentage rate for random controlled substances testing at 50 percent of the average number of covered employees.

2. Names of covered employees will be selected for random testing using a computerized number generating program. Any employee selected for random testing for alcohol and/or controlled substances must proceed to the test site immediately; provided, however, that if the covered employee is performing a safety-sensitive function at the time of notification, the supervisor shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible. The employee's department shall make reasonable arrangements, where possible, to transport the employee to the test site.

3. A driver shall only be tested for alcohol while the driver is actually performing, or is ready to perform, or immediately available to perform any safety sensitive function.

E. Return-to-duty testing.

1. Before a covered employee returns to duty requiring the performance of safety-sensitive functions after engaging in conduct prohibited by this policy, the employee shall: (a) pass a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02; and/or (b) pass a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

F. Follow-up testing.

1. An employee will be subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a Substance Abuse Professional following a determination by a Substance Abuse Professional that a covered employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances. The number and frequency of such follow-up testing shall be at least six (6) follow-up tests in the first 12 months following the employee's return to duty. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The Substance Abuse Professional may terminate the requirement for follow-up testing at any time after

the first six (6) follow-up tests have been administered, if the substance abuse professional determines that such testing is not longer necessary.

2. Follow-up alcohol testing shall be conducted only when the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing safety-sensitive functions.

VI. CONSEQUENCES OF REFUSING TO SUBMIT TO A DRUG AND/OR ALCOHOL TEST

A. A covered employee who engages in conduct that clearly obstructs the testing process or who refuses to submit to an alcohol or controlled substances test, shall be removed from performing or continuing to perform safety-sensitive functions. In addition, such employees may be subject to discipline, in accordance with Philadelphia Civil Service Regulations and applicable collectible bargaining agreements.

1. Examples of conduct that may be considered as clearly obstructing the testing process or refusing to submit to a test include, but are not limited to:

a) failing to provide adequate breath or urine for testing without a valid medical explanation after the employee has received notice of the requirement for testing in accordance with the provisions of this policy; or

b) tampering with or attempting to adulterate the specimen or collection procedure;

c) not reporting to the testing site in the time required for testing;

d) not being able to present adequate identification (e.g., commercial driver's license, City identification, etc.) within the time frames for testing required by this policy;

- e) failing to report an accident without a valid reason;
- f) otherwise engaging in conduct that intentionally obstructs the testing process.

VII. DRUG AND ALCOHOL TEST PROCEDURES AND NOTIFICATION OF RESULTS

A. Drug and alcohol testing under this policy shall be conducted in conformity with all provisions of the parts 40 and 382 of title 49 of the federal regulations. A brief summary of what an employee can expect is provided below.

1. Alcohol testing procedures.

- a) All alcohol testing is done with a breath testing device by a certified Breath Alcohol Technician in a private setting where only the Breath Alcohol Technician and the employee can see or hear the test results.
- b) When an employee arrives at the collection site, the employee shall be required to positively identify himself or herself as the employee selected for testing (e.g., through presentation of photo identification or identification by a supervisor). If the employee's identity cannot be established, the collection site person shall not proceed with the collection.
- c) The employee will be required to blow forcefully into the mouthpiece of the breath testing device.
- d) A screening test is done first. If the result of the screening test is less than 0.02, the employee will sign a certification form and fill in the date.
- e) If the result of the screening test is 0.02 or over, a confirmation test shall be done after 15 minutes but within 20 minutes of the screening test. Prior to the confirmation test, the employee will be prohibited from eating, drinking or putting anything in his or her mouth. The confirmation test result shall control.

2. Drug testing procedures.

- a) For drug testing, employees are required to submit a urine sample.
- b) When an employee arrives at the collection site, the employee shall be required to positively identify himself or herself as the employee selected for testing (e.g., through presentation of photo identification or identification by a supervisor). If the employee's identity cannot be established, the collection site person shall not proceed with the collection.
- c) The collection site person may ask the individual to remove any garments that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen.
- d) The employee shall be instructed to wash and dry his or her hands prior to urination. After washing hands, the individual shall remain in the same area as the collection site person and shall not have access to any water, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.
- e) The employee shall be allowed to provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. However, whenever there is reason to believe that a particular employee has altered or substituted the urine specimen, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
- f) Urine specimens are divided into two (2) containers by the collection site person in the presence of the tested employee. These two (2) samples are called "primary" and "split".
- g) If the test result of the primary specimen is positive, a confirmation test will be performed using gas chromatography/mass spectrometry.
- h) If the conformation test is positive, the Medical Review Officer will notify the employee of the positive result and interview the employee to determine if there is a medical reason for the use of drugs. After notification by the Medical Review Officer, if the employee requests a

retest of the "split" specimen within three (3) work days after the date of notification, the City shall obtain a retest by another laboratory.

B. Notification and confidentiality of results.

1. The City shall notify the covered employee of the results of each test within five (5) work days of receiving the test results. A medical review officer shall be available during business hours to discuss the results of a positive test with an employee.

2. The City will maintain records concerning the testing of covered employees in a secure location with controlled access. Positive test results will be dealt with in a professional and confidential manner. Except as required for normal administrative purposes of the City, or as provided for under the federal regulations, no information regarding such tests shall be released without the written consent of the employee.

3. The City shall release information regarding an employee's testing records if directed by the specific, written consent of the covered employee authorizing release of the information to an identified person, including the employee's union representative.

VIII. DEFINITION OF A POSITIVE TEST RESULTS

A. An alcohol concentration level of .04 % or greater is considered a positive test result for purposes of this policy.

B. An alcohol concentration level of .02 % or greater but less than .04 %, while not considered a positive test result, shall be considered a "prohibited alcohol level" for performing safety sensitive functions.

C. The positive threshold levels for marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines can be found at part 40.29 of title 49 of the federal regulations.

IX. CONSEQUENCES OF VIOLATING THIS POLICY

A. Operating or preparing to operate a motor vehicle with an alcohol level of .1 % or greater, or where a post-accident test or reasonable suspicion test result for drugs or alcohol is positive may result in immediate disciplinary action up to and including dismissal. Otherwise, the consequences for violating this policy are as follows:

B. Positive Test for Prohibited Controlled Substances or Alcohol Concentration level of 0.04 or greater.

1. First Occurrence of a Positive Test for Prohibited Controlled Substances or Alcohol Concentration level of 0.04 or greater.

a) Employee is removed from all safety sensitive assignments, including driving, and not permitted to return to work until evaluated and approved for return to work by the Substance Abuse Professional.

b) The employee shall be advised of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counselling and treatment programs.

c) The Substance Abuse Professional shall:

(1) determine what rehabilitation, if any, the employee must undergo before returning to work;

(2) determine the number and frequency of follow-up testing;

(3) determine whether the employee has properly followed the rehabilitation program prescribed by the Substance Abuse Professional;

d) Until the employee is evaluated by the Substance Abuse Professional, he or she will be docked for the absence. If the Substance Abuse Professional determines that the employee cannot return to work until after completing a rehabilitation/treatment program, the employee:

(1) may use accrued leave (sick, vacation, A.L.) to cover the absence that results from the rehabilitation/treatment program; or

(2) be granted a Leave of Absence Without Pay if the employee does not have sufficient accrued leave to cover the absence that results from the rehabilitation/treatment program.

Utilization of Accrued Leave or a Leave of Absence Without Pay will only be permitted if the employee actually enrolls in a rehabilitation/treatment program meeting the specifications established by the Substance Abuse Professional. Failure to complete the rehabilitation/treatment program required by the Substance Abuse Professional will result in dismissal.

e) Before returning to work, the employee shall be required to pass a "return to duty" test and, if a rehabilitation/treatment program has been prescribed by the Substance Abuse Professional, to satisfactorily complete the prescribed program. If the employee fails the "return to duty" test, he shall be dismissed from City employment.

1. Second Positive Drug Test or an Alcohol Test of .02 or Above following Any Previous Positive Drug Test or any Previous Alcohol Test Result of .04 or Above.

f) In addition to all of the consequences listed above for a First Positive Drug or Alcohol Test, the employee will receive a written warning that any additional positive drug test or any test result indicating an alcohol concentration level of .02 or above will result in dismissal. This warning will remain effective throughout the follow-up period prescribed by the Substance Abuse Professional.

2. Positive Drug Test or an Alcohol Test Result of .02 or Above After Receiving A Written Warning:

a) Employee will be dismissed from employment.

C. Alcohol Test Result Indicating Alcohol Concentration Level of 0.02 % or greater but less than 0.04 % (provided the employee has never been subject to the consequences outlined in Category "b" of Section "X").

1. First Alcohol Test Result Indicating Alcohol Concentration Level of 0.02 % or greater but less than 0.04 % (provided the employee has never been subject to the consequences outlined in Category "b" of Section "X").

a) Employee is removed from all safety sensitive assignments, including driving, and not permitted to perform any safety sensitive functions for 24 hours or until the start of his or her next shift, whichever period is longer.

(1) Re-Assignment to non-safety sensitive assignments may be permitted if the supervisor determines that the employee can effectively perform the re-assignment without a risk of injury to the employee or others.

(2) If the supervisor believes that the employee cannot safely and effectively perform non-safety sensitive assignments, the employee shall be sent home. The employee may use accrued leave (sick, vacation or A.L.) to cover the absence.

b) Before returning to work, the employee shall be required to pass a "return to duty" alcohol test with an alcohol level of less than .02. Failure to pass the "return to duty" test will constitute an additional violation occurrence, subject to the consequences for that level of violation as defined in this policy.

2. Second Alcohol Test Result, Within a Twenty-Four Month Period, Indicating Alcohol Concentration Level of 0.02 % or greater but less than 0.04 % (provided the employee has never been subject to the consequences outlined in Category "B" of Section "X").

a) Employee is removed from all safety sensitive assignments, including driving, and sent home without pay for a period of 24 hours or until the start of his or her next shift, which period is longer.

(1) Employee shall not be re-assigned.

b) Before returning to work, the employee shall be required to pass a "return to duty" alcohol test with an alcohol level of less than .02.

c) The employee shall be subject to follow-up testing as determined by the Medical Evaluation Unit.

3. Third Alcohol Test Result, Within Twenty-four Months of Last Violation, Indicating Alcohol Concentration Level of 0.02 % or greater but less than 0.04 % (provided the employee has never been subject to the consequences outlined in Category "B" of Section "X").

a) Employee is removed from all safety sensitive assignments, including driving, and sent home without pay for a period of 24 hours or until the start of his or her next shift, which period is longer.

(1) Employee shall not be re-assigned.

b) Before returning to work, the employee shall be required to pass a "return to duty" alcohol test with an alcohol level of less than .02.

c) The employee is given a written warning that if he tests positive for drugs or has an alcohol level of .02 or greater within the next 24 months, he will be dismissed from employment.

d) The employee shall be subject to follow-up testing as determined by the Medical Evaluation Unit.

4. Fourth Alcohol Test Result, Within Twenty-four Months of Last Violation, Indicating Alcohol Concentration Level of 0.02 % or greater but less than 0.04 % or a positive test for controlled substances.

a) Employee will be dismissed from employment.

D. NOTE: Employees who have been tested at or above the 0.02 level for alcohol, or positive for controlled substances, but who have not received a notice of intent to dismiss based upon such occurrences, shall be permitted to apply for voluntary demotion to a position that does not require the operation of any motor vehicle. Approval of such a demotion shall be at the sole discretion of the appointing authority, and may be conditioned upon the employee's agreement to participate in a program of monitored aftercare including random follow-up testing. Any employee granted such a demotion shall agree in writing not to apply for any position requiring driving for a period of two years from the date of demotion.

X. EMPLOYEE EDUCATION AND TRAINING

A. Prior to the initiation of testing under this policy, and upon assignment, appointment or promotion to a covered position, the City will provide to all covered employees a copy of this policy and supplemental educational materials. Pursuant to 49 CFR part 382.601 (d) covered employees are required by federal law and this policy to sign a statement certifying that they have received a copy of these materials.

XI. EMPLOYEE ASSISTANCE

A. Any employee who tests positive for controlled substances shall be provided, by a Substance Abuse Professional, with information on available treatment options.

B. Covered employees who believe that they may have problems associated with the misuse of controlled substances and/or alcohol are encouraged to voluntarily disclose such problems. Employees who voluntarily disclose such problems shall not be disciplined for such disclosure. Rather, such employees will be advised of the evaluation and treatment resources that are available. The City shall consider a disclosure to be voluntary only if it is made prior to a referral for testing or before any accident that would lead to testing.

XII. QUESTIONS CONCERNING THIS POLICY

1. Employees may direct questions concerning this policy to their departmental Personnel Officer.