



# Drug and Alcohol Testing

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## **Drug and Alcohol Testing**

### **A. Purpose**

To establish a CVES-based alcohol and drug testing program to help prevent accidents and injuries resulting from the misuse of alcohol and drugs by covered drivers of commercial motor vehicles in compliance with the Department of Transportation regulations and pursuant to the Omnibus Transportation Employee Testing Act of 1991 (the Act) and 49 CFR Part 40.

### **B. Applicability**

This policy applies to all CVES employees or applicants who have been extended a conditional offer of employment who operate commercial motor vehicles and are subject to the commercial drivers license (CDL) requirements established by the DOT.

### **C. Objectives**

To establish rules and procedures to deter all illegal drug use, and deter on-duty, pre-duty and post-accident alcohol use, as well as on-duty alcohol impairment stemming from pre-duty use, for all covered drivers who perform safety sensitive functions;

To detect and eliminate the possibility that CVES covered drivers will perform safety-sensitive functions after testing positive for alcohol or drugs;

To comply with applicable federal and state laws, including the Omnibus Transportation Employee Testing Act of 1991;

To provide reasonable measures for the early detection of personnel not fit to perform activities within the scope of this policy;

To maintain a workplace free of drugs and alcohol; and

To inform employees through education, in service training and other appropriate forums, about illegal drugs, and alcohol abuse, their use, possession, distribution, and effects;

### **D. Testing**

There are several occasions when an individual will be subject to drug and alcohol tests pursuant to this policy. Prior to the administration of the following tests, the CVES or its testing agent will notify the covered driver that the test is required under the Code of Federal Regulations.

The testing occasions shall include:

## **1. Pre-duty testing**

Pre-duty testing is testing for drugs that CVES will administer after a conditional offer of employment has been extended and prior to any covered driver's performance of a safety-sensitive function. CVES will not allow any covered driver to commence the performance of any safety-sensitive function unless the drug testing reveals a verified negative test result.

CVES may, in its sole discretion, forego pre-duty testing where the exceptions promulgated by the regulations relating to drug and alcohol testing of covered drivers by their previous employers, are satisfied.

## **2. Reasonable Suspicion testing**

Reasonable suspicion testing is alcohol and drug testing that the CVES will conduct when it has reasonable suspicion to believe that a covered driver has engaged in conduct prohibited by this policy. Reasonable suspicion must be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of a covered driver by the Assistant Human Resource Director, Health, Safety, Risk Management Specialist, or any other employee as determined by the CVES who is specially trained to recognize alcohol misuse or drug use. The observations may include indications of the chronic and withdrawal effects of controlled substances. Reasonable suspicion may also be based on a covered driver's attendance patterns, such as, absences around weekends, paydays, excessive use of sick leave, excessive lateness, on-the-job accidents, and poor relationships with coworkers and supervisors.

A written record shall be made of observations leading to reasonable suspicion, signed by the supervisor or person who made the observations, within twenty-four (24) hours of the observed behavior or before the results of drugs test are released, whichever is earlier.

CVES shall not administer a reasonable suspicion alcohol test more than eight (8) hours following a determination that reasonable suspicion exists to believe that the alcohol prohibitions of this policy have been violated. Covered drivers are subject to reasonable suspicion alcohol testing as follows: Immediately prior to performing safety sensitive functions, while performing safety sensitive functions, or immediately following the performance of safety sensitive functions. Reasonable suspicion drug testing may be conducted at any time the covered driver is on duty for the district.

## **3. Random testing**

Random testing is unannounced testing for alcohol and drugs administered in a statistically random manner throughout the year to covered drivers employed by CVES in ratios as required by the DOT regulations, so that all covered drivers have an equal probability of selection each time a random test is administered.

Covered drivers are subject to random alcohol testing as follows: immediately prior to performing safety sensitive functions; or while performing safety sensitive functions, or immediately following the performance of safety sensitive functions. Random drug testing may be conducted at any time the covered driver is on duty for CVES.

#### **4. Post Accident testing**

A post-accident test is a test for alcohol and drugs administered following an accident involving a commercial motor vehicle to each surviving covered driver: 3

- a. who was performing safety sensitive functions with respect to the vehicle, if the accident involved the loss of human life; OR
- b. who receives a citation under State or local law for a moving violation arising from the accident; AND
  1. if the accident resulted in one or more motor vehicles incurring substantial structural damages as a result of the accident; OR
  2. if the accident resulted in bodily injury to a person who as a result of the injury immediately receives medical treatment away from the scene of the accident.

CVES will not administer a post-accident alcohol test more than eight hours following the accident and will not administer a post-accident drug test more than 32 hours following the accident. A covered driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by CVES to have refused to submit to testing. This shall not be construed to require the delay of necessary medical attention for injured individuals following an accident or to prohibit a covered driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

The results of a breath or blood test for the use of alcohol or a urine test for the use of drugs, conducted by federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of the policy concerning post-accident testing, provided such tests conform to applicable federal, State, or local requirements and that the results of the test are obtained by CVES. If such a test results in an alcohol concentration above 0.02, a 24 hour out-of-service order may be issued by the law enforcement official.

#### **5. Return to duty testing**

- a. Return to duty testing is alcohol or drug testing conducted after a covered driver has engaged in prohibited conduct under this policy prior to the employee's return to the performance of a safety-sensitive function. The alcohol test result must indicate an alcohol concentration of less than .02 and a drug test must indicate a verified negative result for illegal drugs.
- b. Urine observation collections require that a same gender observer check for prosthetic and other devices that could be used to cheat a drug test.
- c. The same gender observer shall also watch the employee urinate into the collection container.

## **6. Follow-up testing**

- a. Follow-up tests are given following a determination by the Substance Abuse Professional (SAP) that a driver is in need of assistance in resolving problems associated with misuses of alcohol and/or drugs. This is an unannounced test, given at least six (6) times within twelve (12) months with the actual frequency and number of tests determined by the Substance Abuse Professional (SAP), but in no event may the follow up testing continue for a period beyond 60 months from the covered driver's return to duty. The Substance Abuse Professional may terminate the requirement of follow-up testing at any time after the first six (6) tests have been administered if a determination is made that follow-up testing is no longer necessary.
- b. Covered drivers are subject to follow-up alcohol testing as follows: immediately prior to performing safety sensitive functions, or while performing safety sensitive functions, or immediately following the performance of safety sensitive functions. Follow-up drug testing may be conducted at any time the covered driver is on duty for CVES.
- c. Urine observation collections require that a same gender observer check for prosthetic and other devices that could be used to cheat a drug test.
- d. The same gender observer shall also watch the employee urinate into the collection container.

## **E. Testing Procedures**

CVES shall retain an approved company to perform collection and testing, to ensure chain of custody requirements, and to ensure the correct employee is tested and matched with the correct test results. Such company will be required to follow the federal regulations to ensure compliance with the blind sample, calibration of the EBT, laboratory certification and proper training of the Breath Alcohol Technician (BAT). Testing for alcohol or controlled substances will be taken on-site or at the laboratory, in a secure location that affords privacy and with the proper safeguards to ensure the integrity of the specimens collected. Privacy during the collection of the urine sample shall not be available to employees reporting for return to duty testing or follow-up testing. The provision of paragraph D5 and D6 shall be applicable in those cases. The Drug and Alcohol Coordinator (see appendix) can be contacted to request the name of the company hired to perform the drug and alcohol testing services.

If the test comes back positive dilute, that shall be considered a positive verified test and the covered driver shall not be allowed to take another test. If the test comes back negative dilute for pre-employment testing, return to duty testing and follow up testing, the covered driver shall be required to take another test. If the test comes back cancelled, neither positive nor negative for drugs or alcohol, the employee shall not be allowed to perform safety sensitive functions if a negative result is required by the regulations. CVES shall order a recollection in the case of a cancelled test for the purpose of retesting in the case of pre-employment, return to duty or follow up testing.

## **1. Alcohol**

Alcohol testing will be administered by a trained and qualified BAT. The evidential breath testing device (EBT) used for testing shall meet the standards promulgated by the DOT and have a quality assurance plan developed by the manufacturer to insure proper calibration. If the initial test reveals an alcohol concentration of .02 or greater, a confirmatory test must be performed. The confirmatory test result is the final test result for the purposes of this policy.

## **2. Drugs**

A Department of Health and Human Services certified laboratory will perform drug testing on urine samples provided by covered drivers. The drugs for which tests will be conducted are: marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The cutoff levels for these drugs will be those set forth in the DOT regulation.

## **3. Uncompleted testing**

If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable begin a new screening or confirmation test as applicable, e.g., using a new breath alcohol testing form with a new sequential test number.

## ***F. Requirements Prior to Commencing Safety Sensitive Position***

1. Pre-duty request for prior employment drug and alcohol testing  
In the case of all new safety sensitive employees, CVES shall request the following written information, after obtaining the prospective employee's written consent, from DOT regulated employers who have employed the employee at any time during the two years prior to the date of the employee's application or transfer:
  - a. alcohol tests with a result of 0.04 or higher alcohol concentration
  - b. verified positive drug test
  - c. refusal to be tested
  - d. other violations of DOT agency drug and alcohol testing; and
  - e. with respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return to duty requirements.

The above listed information should be obtained and reviewed before the prospective employee commences performing any safety sensitive functions. However, CVES has a 30 day grace period from the day the employee starts to perform safety sensitive functions in which to obtain or make and document a good faith effort to obtain this information. CVES must not allow any employee to continue performing safety sensitive functions after 30 days if BOCES has not obtained or made and documented a good faith effort to obtain this information.

2. CVES must ask the prospective employee whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for but did not obtain safety sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years.

If the prospective employee admits that he/she has tested positive or a refused to test then CVES may choose not to hire the prospective employee. However, if CVES does choose to hire a prospective employee that has admitted that he/she has tested positive or refused to test, CVES must not use the employee to perform safety sensitive functions until and unless the employee documents successful completion of return to duty process.

### ***G. Prohibited Conduct***

1. No covered driver shall report for duty or remain on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.02 or greater;
2. A covered driver shall not be on duty or operate a commercial motor vehicle while the covered driver possesses alcohol;
3. A covered driver shall not use alcohol while performing safety sensitive functions;
4. No covered driver shall perform safety-sensitive functions within six (6) hours after using alcohol;
5. A covered driver required to take a post accident alcohol test shall not use alcohol for eight (8) hours following the accident, or until he/she undergoes a post accident alcohol test, whichever is first;
6. A covered driver shall not report for duty or remain on duty requiring the performance of safety sensitive functions when the driver is using drugs, except when the use is pursuant to the instructions of a physician who has advised the driver that the drug does not affect the driver's ability to operate safely a commercial motor vehicle;
7. No driver shall report for duty, remain on duty; or perform a safety-sensitive function, if the driver tests positive for controlled substances;
8. Independent of the requirements of the Act and the regulations promulgated thereunder, the covered driver must provide written notice from the physician to the Drug and Alcohol Coordinator that he or she is using controlled substances pursuant to the instructions a physician and that the physician advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle;
9. A covered driver shall not refuse to submit to an alcohol or drug test required under this policy;



10. An applicant for employment who has been given a conditional offer of employment may not refuse to sign a release authorizing CVES to request from all former employers where the employee was a covered driver, his or her drug and alcohol testing records.

## **H. Consequences for Covered Drivers**

Pursuant to the Act and the regulations:

1. a covered driver who has an alcohol concentration of at least .02 shall be removed immediately from his/her performing safety sensitive position for at least 24 hours and shall not return until an evaluation is conducted by the SAP, completes any other steps required by the SAP, and takes a return to duty test;
2. a covered driver who has an alcohol concentration of at least .04 shall be removed immediately from his/her safety sensitive position and may not return until he or she is evaluated by a SAP, completes any other steps required by the SAP, and takes a return to duty test;
3. a covered driver who has a verified positive result on a drug test shall be prohibited from performing safety sensitive functions until the employee is evaluated by a SAP, completes any other steps required by the SAP, and takes a return to duty test;
4. a covered driver who refuses to submit to a test shall be prohibited from performing safety sensitive functions until the employee is evaluated by SAP, completes any other steps required by the SAP, and takes a return to duty test;
5. a covered driver may not perform safety-sensitive functions if there exists a reasonable suspicion that the driver is under the influence of, or impaired by, alcohol as shown by the behavioral, speech, and performance indicators of alcohol misuse, until an alcohol test is administered and the driver's alcohol concentration measures less than .02 or 24 hours have elapsed following a determination that reasonable suspicion exists to believe that the alcohol prohibitions of this policy have been violated;
6. a covered driver may not perform safety-sensitive functions even if the alcohol concentration is less than .02, or the alcohol concentration is unknown, if the employer detects the presence of alcohol in the driver by other means;

Independent of the requirements of the Act and the regulations promulgated thereunder, a covered driver may not perform safety-sensitive functions if there exists a reasonable suspicion that the driver is under the influence of, or impaired by, drugs as shown by the behavioral, speech, and performance indicators of drug abuse, until a drug test is administered and there is a verified negative result.

Independent of the requirements of the Act and the regulations promulgated thereunder, covered drivers who have been found to have violated the prohibited conduct under this policy will be immediately suspended from their safety-sensitive function without pay pending a complete review of the test results and what led to the test results, if appropriate.

After review, if the covered driver was found to have an alcohol concentration of 0.04 or greater, a positive drug test, or refused to submit to a test, the employee shall be terminated. If the covered driver was found to have an alcohol concentration between 0.02 and 0.04, he or she shall be required to be evaluated by a SAP, complete any other steps required by the SAP, and take a return to duty test before returning to work.

A covered driver who is an applicant for employment who has been extended a conditional offer of employment shall have such conditional offer revoked if:

- a. he/she undergoes a drug test which reveals a verified positive test result; or
- b. he/she admits, during the pre-duty request for prior employment drug and alcohol testing, to a positive test or refused to test on any pre-employment drug or alcohol testing administered by the employer to which the employee applied for but did not obtain safety sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years, and the Board chooses not to hire the prospective employee; or
- c. he/she previously failed to complete successfully a rehabilitation program (return to duty process) established by a SAP resulting from a violation of that employer's policy or the Act; or
- d. he/she fails to provide a release for the CVES to request information from a former employer where the individual was a covered driver;
- e. the above actions shall be taken in accordance with the provisions of the employee's collective bargaining agreement, §75 of the Civil Service Law, §3020-a of Education Law, whichever is applicable.

## ***I. Referral, Evaluation, and Treatment***

The requirements of this section do not apply to applicants who refuse to submit to a pre-duty drug test or who have a pre-duty drug test with a verified positive test result.

1. CVES shall make available to a covered driver who has violated this policy, information regarding the resources available for evaluating and resolving problems associated with the misuse of alcohol and use of drugs, including the names, addresses, and telephone numbers of SAP's and counseling and treatment programs. CVES shall ensure that the listed SAP do not refer the covered driver to the SAP's private practice, or to a person or organization from which the SAP receives remuneration, or in which the substance abuse professional has a financial interest;
2. CVES requires that each covered driver who engages in conduct prohibited by this policy shall be evaluated by a SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse or drug use. The SAP shall also determine if follow up testing is necessary and, if so, the number and frequency of such

testing. The costs associated with this evaluation shall be the responsibility of the covered driver;

3. before a covered driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this policy, the covered driver shall undergo a return to duty test;
4. the SAP will determine if the covered driver has properly followed any rehabilitation program prescribed following the evaluation.

## **J. Employee Notification**

CVES shall provide a copy of this policy to each covered driver and to the driver's collective bargaining agent. Each covered driver is required to sign a statement certifying that (s)he has received this information. CVES shall maintain the original signed certification for the duration of the employee's employment or two (2) years, whichever is longer. CVES will provide a copy of the certification to the covered driver upon request.

## **K. Savings Clause**

If any provision of this policy is, or shall at any time be contrary to law, then such policy provision shall be considered modified or deleted so as to comply with the superseding legal requirements without any affect on the remaining policy provisions.

Legal ref: U.S. Constitution, 4th Amendment  
Omnibus Transportation Employee Testing Act of 1991, 49 USC §§31136; 31306  
Americans with Disabilities Act, 42 USC §§12111-12117  
49 CFR Parts 40, 382 and §§395.20 and 521(b)  
New York Vehicle and Traffic Law, §§509-1; 1192; 1193  
New York Labor Law, §201-d  
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