



4026 A

Procedures for Testing

Regulation 4026 A

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I. PURPOSE

The purpose of this regulation is to establish the procedures for testing for alcohol or drug use or abuse by employees or applicants for positions who are required to have a commercial vehicle driving license.

II. ALCOHOL TESTING PROCEDURES

- A. Applicants or employees who are required to be tested for alcohol shall submit to a breath test administered by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing Device (EBT).
- B. If the test is due to a supervisor acting upon a reasonable suspicion that the employee has consumed alcohol,
 1. the test should take place within two (2) hours of the determination by the supervisor, but at no rate at more than eight (8) hours of the determination. If the test is conducted after two (2) hours of the determination, the reason(s) for the delay in testing shall be documented.
 2. in all cases, whether or not a test is completed, the employee shall not be permitted to perform or continue to perform safety-sensitive functions until twenty-four (24) hours have elapsed following the determination of reasonable suspicion.
- C. If the test is due to an accident,
 1. the test must occur as soon as is practicable after the occurrence of the accident;
 2. if the test is not completed within two (2) hours of the accident, the reason(s) for the delay must be documented. In no event shall the test occur more than eight (8) hours after the accident;
 3. an employee who is subject to post-accident testing must remain available for testing or the employee shall be considered to have refused to submit to testing;
 4. The employee is prohibited from using alcohol for eight (8) hours following the accident, or until the employee has undergone a post-accident alcohol test, whichever comes first.
- D. If the test is return to duty testing, the employee shall not return to work until undergoing return to duty tests with a verified negative result for controlled substances. Return to work testing shall be at the employee's expense.
- E. Two breath tests are required to determine if a person has a prohibited alcohol concentration.
 1. Any result less than 0.02 alcohol concentration is considered a "negative" test.



2. If the alcohol concentration on any test is 0.02 or greater, a second confirmation test must be conducted.
- F. If an employee attempts and fails to provide an adequate amount of breath, the District will direct the employee to obtain written evaluation from a licensed physician to determine if the employee's inability to provide a specimen is genuine or constitutes a refusal to test.
- G. Test results are reported directly to the designated District contact person.
- H. If the test is for a return to work approval, the employee must have a test with a less than 0.02 alcohol concentration.
- I. If a test results in a finding of 0.02 alcohol concentration but less than 0.04, an employee shall not be permitted to perform safety-sensitive functions for not less than 24 hours.
- J. If the test is a random selection testing, the employee must proceed immediately to the testing site upon notification, provided, however, that if an employee is performing a safety-sensitive function at the time of notification, the employee shall cease performing the safety-sensitive function and proceed to the testing site as soon as possible.
- K. If an employee returns a test with a finding of 0.02 alcohol concentration the employee shall be subject to a minimum of six (6) unannounced follow up tests in the twelve months following the employee's return to full duty.

III. CONTROLLED SUBSTANCE TESTING PROCEDURES

- A. Applicants or employees who are required to be tested for control substances shall submit to an analysis of the employee's urine specimen.
- B. In the event of an accident, an employee shall provide a urine sample for controlled substances testing as soon as practicable after the accident. After 32 hours, all attempts to conduct this test shall cease and the reasons shall be documented.
- C. If the test is due to a supervisor acting upon a reasonable suspicion that the employee is under the influence of a controlled substance,
 1. the test should take place within two (2) hours of the determination by the supervisor, but at no rate at more than eight (8) hours of the determination. If the test is conducted after two (2) hours of the determination, the reason(s) for the delay in testing shall be documented.
 2. in all cases, whether or not a test is completed, the employee shall not be permitted to perform or continue to perform safety-sensitive functions until



twenty-four (24) hours have elapsed following the determination of reasonable suspicion.

- D. Split urine samples will be collected according to Federal Highway Administration (FHWA) regulations.
 - 1. The employee will provide a urine sample at a designated collection site.
 - 2. The collection site personnel shall
 - a. pour the urine specimen into two bottles labeled “primary” and “split”,
 - b. seal the specimens,
 - c. complete a chain of custody document, and
 - d. prepare the bottles for shipment to the testing laboratory for analysis.

- E. If the employee is unable to provide the appropriate quantity of urine, the collection site person shall instruct the employee to drink not more than 24 ounces of fluids, and, after a period of no more than two hours, again attempt to provide a complete sample. If the employee is still unable to provide a complete sample, the testing shall be discontinued and the District notified.
 - 1. The Medical Review Officer shall refer the employee for a medical evaluation to determine if the employee’s inability to provide a specimen is genuine or constitutes a refusal to test.
 - 2. If a complete sample is not obtained in a pre-employment situation the District may elect not to refer the applicant for evaluation by a physician and revoke the employment offer.

- F. Urine specimens are transported for testing to a laboratory which is certified to perform controlled substances testing according to Department of Health and Human Services regulations.

- G. Controlled substance test results are reported directly to the Medical Review Officer (MRO) by the testing laboratory. The MRO reports the results to the District designated contact person.

- H. If results of the exam are negative, no further action is necessary.

- I. If the results of the exam are confirmed positive,
 - 1. the MRO shall give the employee an opportunity to discuss the test results.
 - a. The MRO must examine must review any medical records supplied by an employee to determine if a confirmed positive test is the result of the employee having taken legally prescribed medication.
 - b. The MRO will contact the employee directly, on a confidential basis, to determine whether the person wishes to discuss the positive test result.



- (1) If the MRO is unable to reach the employee directly, the MRO will contact the District's designated contact person to request assistance with contacting the employee.
 - (2) The District's designated contact person shall notify the employee that he/she is required to contact the MRO.
 - (3) In the event that neither the MRO nor the District's designated contact person is able to contact the employee, the employee will be placed on suspension without pay and removed from duty immediately.
2. The MRO shall notify the employee that the employee has 72 hours in which request a test of the split specimen at the employee's expense.
 3. The MRO will review the confirmed positive test result to determine whether there is an acceptable medical reason for the positive result.
 4. The MRO shall verify and report a positive test result to the District designated contact person, if there is no legitimate medical reason for a positive test result as received from the testing laboratory.
 5. The MRO may verify a test positive without having communicated directly with the employee about the test results under the following circumstances:
 - a. The employee expressly declines the opportunity to discuss the test results, or
 - b. The employee has not contacted the MRO within five days of being instructed to do so by the District.
- J. If the results of the exam are that the results are due to a dilute specimen, the employee shall be directed to resubmit a specimen for testing under conditions permissible by law, up to and including under observation by another. The results of a retest taken under this section will be deemed the test of record. If an employee refuses to submit to a retest, the employee shall be considered to have refused to test.
- K. If an employee returns a test with a confirmed positive the employee shall be subject to a minimum of six (6) unannounced follow up tests in the twelve months following the employee's return to full duty.

IV. EMPLOYEE AND APPLICANT RETEST RIGHTS

- A. All applicants and employees subject to the drug testing provisions of this policy have the right to request, at employee or applicant expense, a retest of the split urine sample within 72 hours of receiving notice of a confirmed positive test result.
- B. If the employee requests an analysis of the split specimen within seventy-two (72) hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis.



- C. If an employee has not contacted the MRO within seventy-two (72) hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely making contact. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact within seventy-two (72) hours, the MRO shall direct the analysis of the split specimen.

- D. If the confirming retest is negative, no adverse action will be taken against the employee and an applicant will be considered for employment.

Legal Resources:

Minn. Stat. §§ 181.950 – 181.957 (Drug and Alcohol Testing in the Workplace)

Minn. Stat. § 221.031 (Motor Carrier Rules)

49 U.S.C. § 31306 (Omnibus Transportation Employee Testing Act of 1991)

49 U.S.C. § 521 (b) (Civil and Criminal Penalties for Violations)

49 CFR Parts 40 and 382 (Department of Transportation Rules Implementing the Omnibus Transportation Employee Testing Act of 1991)

Cross References:

MPS Policy 4024 (Pre-employment Drug and Alcohol Testing)

MPS Policy 4025 (Drug-Free and Weapons-Free Schools and Workplace)

MPS Policy 4026 (Transportation Employee Drug and Alcohol Testing)

MPS Regulation 4026 B (Definitions)