

Policy 2010-01

Commercial Motor Vehicle Drivers Drug and Alcohol Testing Policy

I. PURPOSE

The purpose of this policy is to establish a program compliant with the Federal Omnibus Transportation Employees Testing Act of 1991, 49 U.S.C. §31301, et seq. (“Act”), which requires employers to conduct specified alcohol and controlled substance testing of employees who perform safety-sensitive functions related to transportation. It is the intent of the St. Johns River Water Management District (“District”) to fully comply with the requirements of the Department of Transportation, Federal Highway Administration (“DOT”), 49 CFR Part 382, hereby adopted by reference. To the extent any of the provisions herein are inconsistent with 49 CFR, Part 382, the provisions of 49 CFR, Part 382 shall control.

The District, because of its responsibility for the safe, effective, and efficient delivery of public services, has an obligation to eliminate illegal drug and alcohol use from its workplace. Drug and alcohol abuse by employees performing a safety-sensitive function such as operating a commercial motor vehicle is extremely dangerous as well as illegal and could result in or contribute to on-the-job accidents, motor vehicle accidents, and personal injury to District employees and the public.

This program closely parallels the District’s Drug-free Workplace Program, Policy 91-06, and in some cases may overlap. However, due to specific record keeping requirements and provisions of the Act, this program will operate independently unless otherwise indicated.

II. SCOPE

A. The scope of this program is limited to those employees possessing a commercial driver’s license (CDL) and operating a commercial motor vehicle (CMV) in the course of their duties. All District employees, including those possessing a CDL, shall remain subject to the District’s Drug-free Workplace Program Policy (91-06); however, employees who possess a CDL and operate a CMV in the course of their duties shall also be subject to the provisions of this policy.

B. In compliance with the Act, the District is required at a minimum to randomly test on an annual basis ten (10) percent of the average number of CDL driver positions for alcohol and fifty (50) percent of the average number of CDL driver positions for controlled substances. The Federal Highway Administration may increase or decrease the minimum annual percentage for alcohol and substance abuse testing based on the reported violation rate.

III. DEFINITIONS

- A. Alcohol – intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.
- B. Commercial Motor Vehicle (“CMV”) – a motor vehicle or combination of motor vehicles used to transport passengers or property if the vehicle meets one of the following requirements:
 - (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 sixteen or more passengers, including the driver; or
 - (4) Is of any size and is used in the transportation of hazardous materials.
- C. Controlled Substance – Any of the following five classes of drugs: amphetamines, cannabinoids (marijuana), phencyclidine (PCP), cocaine, and opiates.
- D. Covered Employee – a District employee who possesses a commercial driver’s license (“CDL”) and operates a commercial motor vehicle (“CMV”) in the course of his or her duties.
- E. Laboratory – any U.S. laboratory certified by the United States Department of Health and Human Services (“HHS”) under the National Laboratory Certification Program as meeting the minimum standards of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs.
- F. Medical Review Officer (“MRO”) – a licensed physician (medical doctor or doctor of osteopathy), employed by or under contract with the District, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who receives laboratory results generated by an employee drug-testing program; who verifies positive, confirmed test results; and who has the necessary medical training to review and interpret a positive test result in relation to the employee’s or job applicant’s medical history or any other relevant biomedical information.
- G. Safety-Sensitive Function – activities that are performed from the time a covered employee begins to work or is required to be in readiness to work until the time the covered employee is relieved from work and all responsibility for performing work. Safety-sensitive functions include:
 - (1) All time at a District facility, or other property, or on any other public property waiting to be dispatched, unless the driver has been relieved from duty by his supervisor;

- (2) All time spent inspecting equipment or servicing, inspecting, or conditioning a CMV;
- (3) All time spent at the driving controls of a CMV in operation;
- (4) All time, other than driving time, in or upon any CMV, except time spent resting in a sleeper berth;
- (5) All time loading or unloading a CMV, supervising or assisting in loading or unloading, attending a CMV being loaded or unloaded, remaining ready to operate the CMV, or giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance for, or remaining with a disabled CMV.

H. Substance Abuse Professional (“SAP”) – a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

IV. EMPLOYEE PROHIBITIONS AND RESPONSIBILITIES

A. Alcohol Use Prohibitions for Covered Employees - Covered employees are prohibited from using alcohol anytime during working hours when it could affect performance of a safety-sensitive function. Any consumption of a preparation including alcohol (e.g., beverages or medicines) is considered alcohol use.

This prohibition extends to the following:

1. Reporting for duty or remaining on duty that requires the performance of a safety-sensitive function while having a blood alcohol concentration of 0.04 or greater;
2. Possessing alcohol while on duty or operating a CMV;
3. Using alcohol while performing a safety-sensitive function;
4. Using alcohol during the four (4) hours before the performance of a safety-sensitive function;
5. Using alcohol for eight (8) hours following an accident involving a covered employee or until the covered employee undergoes a post-accident test (whichever occurs first).

B. Alcohol Use Prohibitions for Supervisors – Supervisors of covered employees are prohibited from the following:

1. Permitting a covered employee to perform or continue to perform a safety-sensitive function if the supervisor has actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater;
2. Permitting a covered employee to operate or continue to operate a CMV if the supervisor has actual knowledge that the covered employee is in the possession of alcohol;
3. Permitting a covered employee to perform or continue to perform safety-sensitive functions if the supervisor has actual knowledge that the covered employee is using alcohol while performing safety-sensitive functions; and
4. Permitting a covered employee to perform or continue to perform safety-sensitive functions if the supervisor has actual knowledge that the covered employee has used alcohol within the past four (4) hours.

C. Controlled Substance Prohibitions for Covered Employees – A covered employee shall not report for duty or remain on duty in a safety-sensitive function when the individual uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the individual that the substance does not adversely affect his or her ability to safely perform safety-sensitive functions. Written verification of this from the physician must be provided to the covered employee's supervisor.

It is the employee's responsibility to obtain information from his or her physician regarding the affect of drugs, whether obtained through a prescription or over-the-counter, on his or her ability to safely perform safety-sensitive functions.

D. Controlled Substance Prohibitions for Supervisors – Supervisors of covered employees who have actual knowledge that a covered employee has used a controlled substance, except where the covered employee has provided appropriate documentation from a physician, shall not permit the covered employee to perform or continue to perform a safety-sensitive function.

E. Refusal to Test.

1. No covered employee shall refuse to submit to random, reasonable suspicion, or post-accident alcohol or controlled substance testing.
2. Events that may be considered a refusal to test include, but are not limited to:
 - a. Failure to report at the collection site when directed to do so;
 - b. Failure to remain at the collection site;

- c. Failure to provide a specimen or a sufficient amount of specimen;
 - d. Failure to cooperate with any part of the collection process; or
 - e. Adulteration or substitution of specimen.
3. No supervisor shall permit a covered employee who refuses to submit to an alcohol or controlled substance test to perform or continue to perform safety-sensitive functions.
 4. Employee refusal to submit to alcohol or controlled substances testing shall be handled in accordance with Policy 91-06, Drug-free Workplace Program, which states that the employee shall be subject to mandatory participation in the District's Employee Assistance Program or other rehabilitation programs, or corrective action, up to and including dismissal.
- F. Supervisor Training – Supervisors/managers of covered employees must undergo at least sixty (60) minutes of training on alcohol misuse and at least sixty (60) minutes of training on the misuse of controlled substances. This training must cover the physical, behavior, speech, and performance indicators of probable alcohol misuses and use of controlled substances.

V. ALCOHOL AND CONTROLLED SUBSTANCES TESTING PROGRAM

A. Test Protocols

1. The actual testing of covered District employees may be performed by a contracted third party professional. Personnel performing the test shall be certified as required by federal regulations, 49 CFR Part 40, as amended. All positive test results shall be confirmed as required by the law. The individual and as the District shall be notified of any confirmed positive results by a Medical Review Officer (MRO).
2. Alcohol – The alcohol test will be conducted using a breath or saliva test to determine the presence of alcohol. The test is generally a two-part process: a screening test and a confirmation test. If the screening test results in a negative reading, no further tests are required. If screening test results in a positive reading, a confirmation test must be conducted. No adverse action will be taken against a covered employee based on a positive screening test without a positive confirmation test.
3. Controlled Substances – The controlled substances test will be conducted using a urine test for the following substances: amphetamines, canninoids (marijuana), phencyclidine (PCP), cocaine, and opiates. Prior to conducting

a required controlled substances test, the District will notify each covered employee to be tested that the test is required and being administered under federal law and that the employee must provide a urine sample that will be tested for the five (5) prohibited controlled substances.

Levels for initial controlled substance tests that are equal to or exceed the initial test cutoff levels will be submitted for confirmation testing. No adverse action will be taken against a covered employee based on a positive screening test without a positive confirmation test.

B. Recordkeeping

1. The Office of Human Resources (“HR”) maintains records of the alcohol and controlled substance testing program. Access to those records will be controlled. To preserve employee confidentiality, HR does not release information pertaining to alcohol or controlled substance testing of a covered employee, except as required by law or expressly authorized in writing.
2. A covered or previously covered employee is entitled, upon written request, to obtain copies of or have distributed any records pertaining to the alcohol and controlled substances testing program, including providing those records to a subsequent employer.
3. HR may disclose information required to be maintained under DOT regulations to the decision-maker in lawsuits, complaints, or other proceedings initiated by or on behalf of a covered or previously covered employee arising from the results of an alcohol or controlled substance test.

C. Types of Testing

The following tests are required under this program:

1. Pre-Employment Testing
 - a. No covered employee may perform a safety-sensitive function for the first time unless he or she has received a verified negative controlled substances test result. This pre-duty test applies to new employees or employees transferred or promoted to a position performing safety-sensitive functions.
 - b. If an applicant’s pre-employment controlled substance test is verified as positive, or if the applicant refuses the test, the

applicant shall be excluded from consideration for employment in a safety sensitive position.

2. Post-Accident Testing

- a. An employee must notify HR as soon as is reasonably possible following an accident.
- b. Post-accident testing for alcohol and controlled substances must be conducted on covered employees performing safety-sensitive functions as soon as practicable after an accident in the following scenarios:
 - (1) If the accident involves a loss of human life; or
 - (2) If the covered employee is issued a citation for a moving traffic violation and one or both of the following occurred:
 - (a) One or more motor vehicles is towed from the scene;
 - (b) There is bodily injury with a person receiving immediate medical treatment away from the scene of the accident.
- c. If the post-accident alcohol test is not performed within two (2) hours of the accident, the employee's supervisor shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. If the test cannot be administered within eight (8) hours of the accident, the District shall cease attempts to administer the test and shall state in the record the reasons for not administering the test.
- d. If a required controlled substances test is not administered within 32 hours following the accident, the District must cease attempts to administer the test. The District must maintain a record of the reason(s) it failed to administer the test within the required time frame.
- e. No covered employee subject to post-accident testing shall leave the scene of an accident before a test is administered (except to obtain assistance or emergency medical care) or fail to remain readily available for testing. A covered employee subject to the post-accident testing requirement who unnecessarily leaves the scene of an accident before a required test is administered or fails

to remain readily available for testing may be deemed by the District to have refused to submit to testing.

- f. The results of a breath alcohol test for the use of alcohol or a urine test for controlled substances that is conducted by federal, state, or local officials having independent authority for the test shall be considered to meet the requirements of this section, provided such test conforms to the applicable federal, state, or local alcohol or controlled substances testing requirements and the District obtains the results.

3. Reasonable suspicion testing

- a. A covered employee will be tested for alcohol or controlled substances when there is reasonable suspicion the employee has violated the prohibitions in section IV, above. A determination that reasonable suspicion exists will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.
- b. Reasonable suspicion alcohol testing can only be directed, and observations giving rise to such testing must be made, during the following times:
 - (1) While the covered employee is performing a safety-sensitive function;
 - (2) Just before the covered employee is to perform a safety-sensitive function; or
 - (3) Just after the covered employee has ceased performing a safety-sensitive function.
- c. A written record of the observations leading to a reasonable suspicion test shall be made in accordance with District Policy 91-06, Drug-Free Workplace.
- d. If the alcohol test is not performed within two (2) hours following the observations giving rise to the reasonable suspicion test, the employee's supervisor shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. If the test cannot be administered within eight (8) hours, the District shall cease attempts to administer the test and shall state in the record the reasons for not administering the test.

4. Random testing

- a. Covered employees will be randomly selected at various times throughout the year on an unannounced basis.
- b. Random alcohol tests will be performed just before, during, or just after performance of a safety-sensitive function.
- c. The selection of covered employees for random alcohol and controlled substance testing shall be made by a computer-based random number generator that is matched with a covered employee's random sample number. The District shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate as determined by the Federal Highway Administration. The District shall ensure that random testing is unannounced and that test dates are spread reasonably throughout the calendar year.

5. Return-to-duty testing

The District is required by law to ensure that, prior to returning to a safety-sensitive function, a covered employee who has violated any of the controlled substances or alcohol use rules undergoes a return-to-duty test that shows a verified negative result for controlled substances or alcohol use. A return to duty test following alcohol misuse may not exceed an alcohol concentration of 0.02. For a return to duty controlled substances test, the urine specimen must be collected under direct observation.

6. Follow-up testing

Each covered employee who has been identified by a substance abuse professional (SAP) as needing assistance in resolving problems with controlled substances and/or alcohol and who has returned to duty that involves the performance of a safety-sensitive function is subject to six (6) follow-up controlled substances and/or alcohol tests over the first twelve (12) months following his or her return to duty. The SAP may require the covered employee to undergo additional controlled substances and alcohol testing for up to sixty (60) months. For a follow-up controlled substances test, the urine specimen must be collected under direct observation.

VII. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT, INCLUDING A POSITIVE TEST RESULT

- A. An employee who engages in any conduct prohibited by this policy may be subject to disciplinary action, up to and including termination.

- B. Following a determination that a covered employee has engaged in the prohibited use of a controlled substance or alcohol, if the covered employee is not terminated from employment, the District shall immediately remove the employee from any duty that involves the performance of a safety-sensitive function. The individual may not be returned to the performance of safety-sensitive function until: (1) the employee undergoes evaluation and, where necessary, treatment; (2) the employee attends a substance abuse recommended course of treatment; and (3) the employee takes a return-to-duty test with a verified negative result.

VIII. MISCELLANEOUS

- A. This program shall not prohibit the dismissal or other disciplinary action against an employee pursuant to any other policy, regulation, or law.
- B. The Office of Human Resources and the Office of General Counsel are designated to answer questions regarding the federal regulations and their applicability to the District.
- C. Upon request, a copy of the federal regulations shall be provided to each covered employee.

History – Effective: 06/30/10 ED, Revised: 11/23/10 ED.

ACKNOWLEDGMENT OF COMMERCIAL MOTOR VEHICLE DRIVERS
DRUG AND ALCOHOL TESTING POLICY

I acknowledge that I have received and read Policy #2010-01, Commercial Motor Vehicle Drivers Drug Testing Policy, established by the St. Johns River Water Management District (“District”) in accordance with the Federal Omnibus Transportation Employees Testing Act of 1991.

I understand that taking a controlled substances test is not an offer of employment by the District.

I understand that any offer of employment in a position requiring possession of a commercial driver’s license that is extended to me is contingent upon my successfully passing a controlled substances test prior to employment and that I will be subject to further controlled substances testing and alcohol testing throughout my period of employment in such a position.

I understand that I will also be asked to sign forms for release of information from previous employers in all cases where driving a commercial motor vehicle was an assigned function.

Employee’s or Job Applicant’s Name (print)

Employee’s or Job Applicant’s Signature

Date