

Sample Drug and Alcohol Policy for FMCSA-Covered Employees

This sample reflects only one generic approach. Legal obligations differ among U.S. jurisdictions and among industries. Thus, the contents of this sample are not to be regarded as legal advice. Companies or individuals with particular questions should seek advice of counsel.

I. Purpose

EMPLOYER has established this alcohol and controlled substances testing program for those employees who are drivers of EMPLOYER's Commercial Motor Vehicles (CMVs) and who require a Commercial Driver's License (CDL), in compliance with the requirements of the Federal Motor Carrier Safety Administration (FMCSA) and the U.S. Department of Transportation (DOT).

Specifically, it is the policy of EMPLOYER that the use, sale, purchase, transfer, possession, or presence in one's system of any controlled substance (as defined in this Policy) by any driver while on EMPLOYER's premises, engaged in company business, while operating company equipment, or while under the authority of EMPLOYER is strictly prohibited.

Government regulations require EMPLOYER to conduct drug and alcohol testing of personnel employed in certain positions. Testing requirements vary according to the agency having jurisdiction and the statutes that apply. It is the policy of EMPLOYER to comply with all applicable regulations regarding such testing. EMPLOYER will follow all applicable federal and state drug testing requirements, including, but not limited to, federal DOT and FMCSA regulations. To the extent the regulations are updated or revised from time-to-time, this Policy shall be considered amended to conform with all applicable requirements.

Participation in EMPLOYER's controlled substances and alcohol testing program is a requirement of each covered driver and, therefore, is a condition of employment.

II. Scope

This Policy applies to all employees who are required to hold a DCL and operate a CMV.

The FMCSA Regulations set the minimum requirements for testing covered employees. EMPLOYER's Policy may, in certain instances, be more stringent. This Policy clearly identifies which aspects are mandated by the FMCSA Regulations, and what is EMPLOYER policy and procedure.

III. Definitions

For purposes of this Policy, the following definitions shall apply:

- A. “Alcohol concentration” (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
- B. “Commercial motor vehicle” (“CMV”) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:
1. Has a gross combination of weight rating at 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds);
 2. Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds);
 3. Is designed to transport 16 or more passengers, including the driver; or
 4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
- C. “Confirmatory drug test” means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.
- D. “Confirmed Drug Test” means a confirmation test result received by a MRO from a laboratory.
- E. “Driver” means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer. For purposes of pre-employment testing only, “driver” shall include a person applying to drive a Commercial Motor Vehicle.
- F. “Performing (a safety-sensitive function)” means a driver is considered to be performing a safety sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform, any safety-sensitive functions.
- G. “Safety-sensitive function” means all 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. Safety-sensitive functions shall include:

1. All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
2. All time inspecting equipment within the meaning of the FMCSA regulations or otherwise inspecting, servicing, or conditioning any CMV at any time;
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 resting in a sleeping berth;
5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

To the extent these definitions are modified by changes in the applicable DOT or FMCSA regulations, this Policy is deemed revised to be consistent with the applicable regulations.

IV. Policy

A driver who violates the FMCSA prohibitions of this Policy, including refusal to be tested, shall be immediately removed from all FMCSA safety-sensitive functions.

Under EMPLOYER's independent authority, the driver may also be subject to disciplinary action, up to and including termination of employment. EMPLOYER reserves the right to take action against a driver, where appropriate, for violation of other EMPLOYER policies that are separate from this Policy.

V. Designated Employer Representative

If you have questions regarding this Policy, please contact:

[For each Designated Employer Representative, provide name, telephone number, and e-mail address]

VI. Prohibitions

A. Substances Prohibited

1. Alcohol:

“Alcohol” use means the drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication), containing alcohol.

2. Controlled Substances:

In accordance with FMCSA rules, urinalysis will be conducted to detect the presence of the following substances:

- a. Marijuana
- b. Cocaine
- c. Opiates
- d. Amphetamines
- e. Phencyclidine (PCP)

Detection levels shall be in accordance with the guidelines adopted by the FMCSA in accordance with the recommendations established by the DOT, 49 CFR Part 40.

B. Alcohol Prohibitions

1. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
2. A driver found to have an alcohol concentration of 0.02 or greater, but less than 0.04, shall not perform any safety-sensitive functions for at least 24 hours.
3. No driver shall use alcohol while performing safety sensitive functions.
4. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol.
5. No driver required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
6. No driver shall refuse to take a required test.

C. Controlled Substances Prohibitions

1. No driver shall report for duty (or remain on duty) requiring the performance of safety sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the

driver that the substance does not adversely affect the driver's ability to safely operate a CMV.

2. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.
3. No driver shall refuse to take a required test.

VII. Circumstances for Testing

The FMCSA requires that controlled substances and alcohol tests be given to drivers in the following circumstances:

A. Pre-Employment

Every applicant for a driving position will be required to submit to and pass a urine drug test as a condition of employment.

Each applicant will be asked whether he/she has tested positive on a DOT pre-employment drug or alcohol test for any DOT employer during the previous two (2) years. Each applicant will also be asked whether he/she has refused to be tested during the previous two (2) years. An applicant who has previously tested positive, or refused to be tested, will not be considered for employment until or unless he/she successfully completes DOT's return to duty process.

Each applicant shall sign a release form authorizing EMPLOYER to obtain information and documentation regarding his/her participation in the previous employer's controlled substances and alcohol program.

B. Reasonable Suspicion

EMPLOYER shall require a driver to submit to an alcohol and/or controlled substances test when a supervisor has reasonable suspicion to believe that the driver has engaged in prohibited conduct. The basis for this decision will be specific, contemporaneous, articulable observations concerning the employee's behavior, speech, and/or body odor(s). Such behavior must be witnessed and documented by a supervisor or Company official who is trained in compliance with FMCSA rules and regulations. The employee's supervisor or another Company official will immediately remove the employee from any and all safety-sensitive functions and take the employee or make arrangements for the employee to be taken to the testing facility.

Reasonable suspicion testing for alcohol may occur only if the supervisor's observations are made during, just preceding, or just after the driver is performing safety-sensitive functions or is attempting to perform safety-sensitive functions.

Reasonable suspicion testing for controlled substances may be based on a supervisor's observations anytime the employee is on duty.

A written record of the observations leading to an alcohol or controlled substances reasonable suspicion test signed by the supervisor or Company official who made the observation, will be completed within 24 hours of the observed behavior, or before the results of the alcohol or controlled substances test are released, whichever is first.

The person who makes the determination that reasonable suspicion exists to conduct an alcohol test may not administer the test.

C. Post-Accident

All employees are to notify their immediate supervisor as soon as possible if they are involved in an accident. The employee will be tested for drugs and alcohol as soon as practicable following the accident if the accident involved:

1. A fatality;
2. Bodily injury with immediate medical treatment away from the scene *and* the employee received a citation, or
3. Disabling damage to any motor vehicle requiring tow away *and* the employee received a citation.

EMPLOYER may also choose to conduct drug and/or alcohol testing on employees under its own authority on employee(s) involved in an accident/incident that may not meet the FMCSA's definition of "accident" noted above, but which resulted in property damage, personal injury, and/or loss of work time.

The employee must remain readily available for testing. If the employee is not readily available for alcohol and drug testing, he/she may be deemed as refusing to submit to testing. However, this requirement should in no way delay necessary medical attention for injured people or prohibit the employee from leaving the scene of the accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

An employee involved in an accident may not consume alcohol for eight (8) hours following the accident or until testing is completed.

If the alcohol test is not administered within two (2) hours following the accident, the employee's immediate supervisor, with assistance from the Designated Employer Representative, if needed, will prepare a report and maintain a record stating why the test was not administered within two (2) hours.

If the alcohol test is not administered within eight (8) hours following the accident, all attempts to administer the test will cease. A report and record of why the test was not administered will be prepared and maintained.

The drug test must be administered within thirty-two (32) hours of the accident. If the test cannot be administered within thirty-two (32) hours, all attempts to test the employee will cease. The employee's immediate supervisor, with assistance from the Designated Employer Representative, if needed, will prepare and maintain a record stating the reasons why the test was not administered within the allotted time frame.

The results of a test for the use of controlled substances 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 tests conform to the applicable Federal, State, or local controlled substances testing requirements and the results of the tests are obtained by EMPLOYER.

D. Random Testing

EMPLOYER will conduct random testing for all covered drivers as follows.

- EMPLOYER will use a selection process based on a scientifically valid method prescribed by FMCSA regulations.
- According to FMCSA regulations, FMCSA driver random testing pools will be maintained separately from all other employees subject to random testing by EMPLOYER.

A percentage of EMPLOYER'S average number of covered employees will be tested for alcohol each year. A percentage of EMPLOYER'S average number of covered employees will be tested for controlled substances each year. The percentages are to be determined annually as prescribed by the DOT. As of the effective date of this Policy, the minimum annual percentages are 10% of the average number of driver positions for alcohol testing and 50% of the average number of driver position for drug testing.

The random testing will be spread reasonably throughout the calendar year. All random alcohol and drug tests will be unannounced, with each covered employee having an equal chance of being tested each time selections are made. Thus, a driver may be selected more than once during a year.

A covered employee may only be tested for alcohol while he/she is performing a safety-sensitive function, just before performing a safety-sensitive function, or just after completing a safety-sensitive function. A random test for controlled substances can be scheduled at any time the driver is on duty.

Once notified that he/she has been randomly selected for testing, the subject employee must proceed immediately to the assigned collection site. If the employee engages in conduct that does not lead to a collection as soon as possible after notification, such conduct may be considered as a refusal to submit to a test.

For random tests, the subject employee's immediate supervisor will be responsible for providing transportation to the collection site.

E. Return-to-Duty

EMPLOYER is not obligated to (and by the inclusion of this provision in this Policy does not undertake or commit to any obligation under the Policy to) reinstate, retain, and/or rehire any covered employee who violates any DOT, FMCSA, or Company prohibition or requirement concerning drugs or alcohol.

In accordance with the FMCSA regulations, before a driver can be returned to duty requiring the performance of a safety-sensitive function after engaging in prohibited conduct (Section IV), the driver must be evaluated by a substance abuse professional, participate in any treatment program prescribed, and pass a DOT return-to-duty controlled substances and/or alcohol test. The driver must have a verified negative controlled substances test or an alcohol test result of less than 0.02 to return to a safety-sensitive function.

F. Follow-Up

A driver who returns to duty after complying with the recommendation(s) of a Substance Abuse Professional ("SAP"), and after providing a negative result on a Return-to-Duty test, is subject to unannounced, directly observed alcohol and/or controlled substances testing as directed by the Substance Abuse Professional. Follow-up testing may be scheduled for a period of up to sixty (60) months, and must include no fewer than six (6) tests to be conducted in the first twelve (12) months after the employee's return-to-duty date. Follow-up alcohol testing shall be conducted only just prior to, during, or just after the driver's performance of safety-sensitive functions, or when the driver is in readiness to perform safety-sensitive functions.

VIII. Refusal to Submit to Testing

An employee may not refuse to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol or controlled substances test required by law and/or this Policy. An employee who refuses to submit to such tests may not perform or continue to perform safety-sensitive functions and may be subject to termination.

For purposes of this Policy, and as defined by the FMCSA, "refusal to submit" (to an alcohol or controlled substances test) means:

1. Failing to appear for any test drug or alcohol test (except a pre-employment test) within a reasonable time, as determined by EMPLOYER, after being directed to do so.
2. Failing to remain at the testing site until the testing process is complete;
3. Failing to provide a urine sample for any drug test required by DOT or FMCSA regulations;
4. Failing to permit direct observation or monitoring during the collection of a urine sample in situations in which direct observation or monitoring is required;
5. Failing to provide a sufficient amount of urine when directed without an adequate medical explanation for the failure;
6. Failure or refusal to take a second test after being directed to do so by EMPLOYER or the collector;
7. Failing to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by EMPLOYER, following an inability to provide a sufficient urine or breath sample;
8. Failing to cooperate with any part of the testing process (e.g. refusing to empty pockets when directed to do so by the collector, behaving in a confrontational way that disrupts the collection process); or
9. Having a verified adulterated or substituted test result.

IX. Alcohol Testing Procedures

Alcohol testing will be conducted at a collection facility pre-approved by EMPLOYER by a qualified Breath Alcohol Technician in accordance with 49 CFR Part 40 procedures. Only products on the conforming products list (approved by the National Highway Traffic Safety Administration) and Part 40 requirements will be utilized for testing under this Policy.

If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test must be performed. The confirmation test must be conducted at least 15 minutes, but not more than 30 minutes, after the completion of the initial test.

If the results are 0.04 or greater, the driver will be removed from his/her driving duties and attendant safety-sensitive functions and evaluated by a SAP.

Refusal to complete and sign the testing form, or refusal to provide breath or an adequate amount of breath, will be considered a positive test, and the driver will be removed from safety-sensitive functions until resolved.

X. Drug Testing Procedures

Specimen collection will be conducted in accordance with applicable state and federal law. Drug testing will be at a collection facility pre-approved by EMPLOYER. The collection procedures will be designed to ensure the security and integrity of the specimen provided by each driver, and those procedures will strictly follow the federal chain-of-custody guidelines.

A. Laboratory Analysis

As required by FMCSA regulations, only a laboratory certified by the Department of Health and Human Services to perform urinalysis for the presence of controlled substances will be retained by EMPLOYER. The laboratory will be required to maintain strict compliance with federally approved chain-of-custody procedures, quality control, maintenance, and scientific analytical methodologies.

All specimens are required to undergo an initial screen followed by confirmation of all positive screen results.

B. Results

According to FMCSA regulations, the laboratory must report all test results directly to the MRO. All test results must be transmitted to the MRO in a timely manner, preferably the same day that the review by the certifying scientist is completed. All results must be reported.

The MRO is responsible for reviewing and interpreting all confirmed positive, adulterated, substituted, or invalid drug test results. Any driver testing positive for the presence of a controlled substance will be contacted by the MRO. The driver will be allowed to explain and present medical documentation to explain any permissible use of a drug. All such discussions between the driver and the MRO will be confidential. If the driver declines to discuss the result, the MRO will verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable. If medically supportable reasons exist to explain the positive result, the MRO will report the test result to EMPLOYER as negative.

If the test result is verified as positive, or as a refusal to test because of adulteration or substitution, the MRO shall inform the employee of his/her right to request a retest of the split specimen at a different DHHS-approved laboratory, and of the process for doing so. Such request must be made by the employee within 72 hours of the employee having been informed of a verified positive test result.

If the driver has not contacted the MRO within 72 hours of being notified of a verified positive controlled substances test, and the MRO concludes there is no legitimate explanation for the driver's failure to contact the MRO within 72 hours, then a split specimen does not have to be tested.

If, after making three reasonable efforts within 24 hours, the MRO is unable to reach the driver directly, the MRO shall contact the DER, who shall direct the driver to contact the MRO within 72 hours. If, after making three reasonable efforts within 24 hours, the DER is unable to contact the driver, the MRO will report the positive result.

XI. Confidentiality

Except as authorized or required by law, or expressly authorized or required by the FMCSA regulations, EMPLOYER shall not release employee information that is contained in records maintained per 49 C.F.R. Section 382.405.

The employee is entitled, upon written request, to obtain copies of any records pertaining to his/her use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances test.

All records will be maintained and retained as specified in the FMCSA's rules and regulations.

XII. Action Which May Be Taken for Policy Violations

EMPLOYER will not stand-down a covered employee before the MRO has completed the verification process, unless EMPLOYER has applied for and received an FMCSA-issued waiver.

No person who has failed an alcohol or drug test, or who has refused to be tested, will be allowed to perform in a safety-sensitive position, until such person has complied with the referral, evaluation, and treatment requirements by a SAP.

In addition to the consequences set forth in this Policy, which are mandated by the FMCSA, EMPLOYER imposes the following additional consequences pursuant to EMPLOYER's independent authority, in accordance with [cite applicable Handbook and/or CBA, etc.]:

1. Following a controlled substances test result of positive, substituted, or adulterated, and the employee does not request a split sample test, or the split sample test confirms the initial result, the employee will be subject to discipline, up to and including termination. If the split sample testing disputed the initial test

results, or if the initial test results are designated invalid, the employee will be reinstated.

2. An employee's refusal to test for alcohol or controlled substances will be considered a positive test result. Pursuant to EMPLOYER's independent authority, an employee whose conduct is considered a refusal to test will be subject to discipline, up to and including termination.
3. Upon notification that an employee has failed an alcohol test (0.04% BAC or greater), the employee will be subject to discipline up to and including termination.
4. Upon notification that an employee tested 0.02% BAC or greater, but less than 0.04 BAC in initial and confirmatory tests for alcohol, the employee will be subject to discipline.

XIII. Education and Training

Any employee who has questions or concerns regarding this Policy may seek clarification and further details from the DER.

Educational materials will be provided to each driver, including a copy of this Policy and information concerning: the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or controlled substances problem; and available methods for intervening when an alcohol or controlled substances problem is suspected.

Supervisors who are designated to determine whether or not reasonable suspicion exists (and who then order a FMCSA driver to undergo testing under FMCSA rules and regulations) will receive at least 60 minutes of training on recognizing alcohol misuse and at least 60 minutes of training on recognizing controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.