

Appendix A : An Employer's Guide to Drug Testing in Montana

This manual provides informal guidance to help Montana employers develop and implement alcohol and controlled substance testing programs. The manual includes a copy of the 1997 "Workforce Drug and Alcohol Testing Act" enacted by the Montana State Legislature, summaries of applicable state and federal codes where appropriate, and a list of resources employers can use for additional help in establishing their alcohol and controlled substance testing programs.

The information in this manual is designed to help educate employers and is not offered as legal advice or opinion. Employers or employees seeking a determination of legal rights or responsibilities should seek the counsel of an attorney or a designated official of an applicable regulating agency.

Much of the information in this guidebook is based on existing state and federal laws. Every effort has been made to ensure this information is consistent with the original laws and rules; however, differences may exist due to interpretation and revision. The United States Codes, Montana Codes, and the Federal Register are the correct and legal documents governing the information presented in this guide. These publications are the only documents used for official references and citations. Neither the United States Government nor the State of Montana assumes any liability for the contents or use of this document.

This guide was originally produced in February 1996 by James E. Burgess of Professional Resources, Inc. The guide was updated in October 1997 by Mike Muscarelli and John I. C. Ramirez

Problem: Drugs and Alcohol in the Workplace

Alcohol and drug abuse are prevalent in the American workplace. Seventy percent of current illicit drug users in the United States are employed- more than 10 million employees. Two thirds of all adults in the U.S. use alcohol, one out of three occasionally abuse alcohol, and 17 million U.S. adults are alcoholic. The use of drugs and misuse of alcohol in the workplace has a negative impact on lives, work, productivity, safety, and costs.

The cost to American industry and government in the number of lives lost, injuries, property damage, and financial loss from the misuse of drugs and alcohol is enormous- an estimated \$60 billion a year. Nationwide, alcohol misuse claims at least 100,000 lives annually, 25 times as many as all illegal drugs combined.

Employee drug and alcohol abuse is a leading cause of accidents in the workplace. An estimated 20 to 25 percent of all on-the-job accidents involve an employee impaired by alcohol or drugs. The National Safety Council says on-the-job accidents are four times more costly than personal accidents, with an estimated average cost to employers of \$168,000 for a fatal accident and \$6,900 for a non-fatal accident.

Response: Laws and Rules

Federal Law

The Omnibus Transportation Employee Testing Act of 1991 The goal of the Omnibus Act is to reduce substance abuse in the workplace by requiring alcohol and drug testing of safety-sensitive employees in the aviation, motor carrier, railroad, and mass transit industries.

Federal Rules: DOT Drug and Alcohol Testing Regulations In February 1994, the U.S. Department of Transportation (DOT) established rules to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by employees who perform safety-sensitive functions in their industries. The rules expand and supplement existing drug testing rules published in November 1988 that mandated drug testing of aviation, interstate motor carrier, railroad, pipeline, and commercial marine employees. In general, federal rules require alcohol and drug testing of employees who are required to have a commercial driver's license.

Montana Law

Montana statute does not mandate drug and alcohol testing. Montana law does require all employers using drug and alcohol testing to adopt procedures developed by the DOT (49 Code of Federal Regulations, part 40). Montana law also restricts testing to ensure only employees involved in certain hazardous, security, safety, or fiduciary positions are subject to testing.

Results: Requirements

In general, federal DOT regulations require covered interstate transportation employers and/or employers of those required to have a commercial drivers license (CDL) to:

- Develop and enforce a comprehensive substance abuse policy.

- Develop and implement a drug and alcohol testing program, either as an entity or part of a consortium.
- Educate and train supervisors.
- Provide drug and alcohol information to all employees subject to testing.
- Designate a medical review officer.
- Identify collection sites.
- Identify a substance abuse professional.
- Test all covered employees for controlled substance and alcohol.
- Comply with record keeping and reporting requirements.

Federal Testing Requirements

The DOT drug and alcohol testing procedures rules (49 CFR, Part 40) establish the exact procedures for drug and alcohol testing. These rules detail the procedures concerning accuracy, reliability and confidentiality of test results. The procedures include training and proficiency requirements for the breath alcohol technician (BAT), quality assurance plans for the breath testing devices, and protection of employee test records.

Employer Options in Addition to Testing

Alcohol and controlled substance testing is only one of many choices available to help organizations develop safe, healthy, and productive workplaces. Other alternatives may include:

- Developing employee safety teams
- Training supervisors to recognize signs and symptoms of drug or alcohol impairment
- Developing an employee assistance program
- Improving performance appraisal systems
- Assessing safety problems
- Educating employees about problems and risks associated with drug and alcohol misuse
- Employers who are not directly required by DOT regulations to test should carefully consider all the costs and consequences of an alcohol and controlled substance testing program. For many employers, testing may not be necessary or appropriate.

Montana Employers Regulated by a DOT Agency

Depending on the situation, there can be contradictions between the requirements of the Federal Employers and employees regulated, in whole or in part, by a DOT agency must comply with DOT rules. Federal drug and alcohol testing rules preempt Montana laws, rules, regulations, or orders to the extent that:

- Compliance with both the Montana requirement and federal rules is not possible; or
- Compliance with the Montana requirement is an obstacle to the accomplishment and execution of any federal requirement.

This does not preempt Montana criminal laws that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public

Montana Employers Not Regulated by a DOT Agency

Employers planning to establish a drug and alcohol testing program but who are not regulated, in whole or in part, by a DOT agency must comply with Montana law.

For more information on federal DOT rules, please contact the Montana Office of the Federal Highway Administration at (406) 441-1222.

The Montana Workforce Drug and Alcohol Testing Act

Be it enacted by the Legislature of the State of Montana:

39-2-205. Short title. {Sections 39-2-205 through 39-2-211} may be cited as the "Workforce Drug and Alcohol Testing Act."

39-2-206. Definitions. As used in {sections 39-2-205 through 39-2-211}, the following definitions apply:

- (1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (2) "Alcohol concentration" 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.
- (3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.
- (4) "Employee" means an individual engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position for an employer and does not include an independent contractor. The term includes an elected official.
- (5) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.
- (6) "Hazardous work environment" includes but is not limited to positions:
 - (a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;
 - (b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or
 - (c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.
- (7) "Medical review officer" means a licensed physician trained in the field of substance abuse.
- (8) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.
- (9) "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in {sections 39-2-207 and 39-2-208}.

(10) "Sample" means a urine specimen to determine the presence of a controlled substance or a breath alcohol test to determine the presence of alcohol.

39-2-207. Qualified testing program. A qualified testing program must comply with the following criteria:

(1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and must be available for review by all employees 60 days before the terms are implemented or changed. Controlled substance and alcohol testing procedures must conform to 49 CFR, part 40. At a minimum, the policies and procedures must require:

(a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;

(b) the employer's program for regularly educating or providing information to employees on the health and workplace safety risks associated with the use of controlled substances and alcohol;

(c) the employer's standards of conduct that regulate the use of controlled substances and alcohol by employees;

(d) a description of available employee assistance programs, including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees;

(e) a description of the sanctions that the employer may impose on an employee if the employee is found to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test positive for the presence of a controlled substance or alcohol;

(f) identification of the types of controlled substance and alcohol tests to be used from the types of tests listed in {section 39-2-208};

(g) a list of controlled substances for which the employer intends to test and a stated alcohol concentration level above which a tested employee must be sanctioned;

(h) a description of the employer's hiring policy with respect to prospective employees who test positive;

(i) a detailed description of the procedures that will be followed to conduct the testing program, including the resolution of a dispute concerning test results;

(j) a provision that all information, interviews, reports, statements, memoranda, and test results are confidential communications that may not be disclosed to anyone except:

(i) the tested employee;

(ii) the designated representative of the employer; or

(iii) in connection with any legal or administrative claim arising out of the employer's

implementation of {sections 39-2-205 through 39-2-211} or in response to inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$1,500, when there is reason to believe that the tested employee may have caused or contributed to the accident; and

(k) a provision that information obtained through testing that is unrelated to the use of a controlled substance or alcohol must be held in strict confidentiality by the medical review officer and may not be released to the employer.

(2) In addition to imposing appropriate sanctions on an employee for violation of the employer's standards of conduct, an employer may require an employee who tests positive on a test for controlled substances of alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitative program as a condition of continued employment. An employer may require the employee to submit to periodic follow-up testing as a condition of the counseling, treatment, or rehabilitation program.

(3) Testing must be at the employer's expense, and all employees must be compensated at the employee's regular rate, including benefits, for time attributable to the testing program.

(4) The collection, transport, and confirmation testing of urine samples must be performed in accordance with 49 CFR, part 40.

(5) Before an employer may take any action based on a positive test result, the employer shall have the results reviewed and certified by a medical review officer who is trained in the field of substance abuse. An employee or prospective employee must be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs.

(6) Breath alcohol tests must be administered by a certified breath alcohol technician and may only be conducted using testing equipment that appears on the list of conforming products published in the Federal Register.

(7) A breath alcohol test result must indicate an alcohol concentration of greater than 0.04 for a person to be considered as having alcohol in the person's body.

39-2-208. Qualified testing program- allowable types- procedures. Each of the following activities is permissible in the implementation of a qualified testing program:

(1) An employer may test any prospective employee as a condition of hire.

(2) An employer may use random testing if the employer's controlled substance and alcohol policy includes one or both of the following procedures:

(a) An employer or an employer's representative may establish a date when all salaried and wage-earning employees will be required to undergo controlled substance or alcohol tests, or both.

(b) An employer may manage or contract with a third party to establish and administer a

random testing process that must include:

- (i) an established calendar period for testing;
- (ii) an established testing rate within the calendar period;
- (iii) a random selection process that will determine who will be tested on any given date during the calendar period for testing;
- (iv) all supervisory and managerial employees in the random selection and testing process; and
- (v) a procedure that requires the employer to obtain a signed statement from each employee that confirms that the employee has received a written description of the random selection process and that requires the employer to maintain the statement in the employee's personnel file. The selection of employees in a random testing procedure must be made by a scientifically valid method, such as a random number table or a computer-based random number generator table.

(3) An employer may require an employee to submit to follow-up tests if the employee has had a verified positive test for a controlled substance or for alcohol. The follow-up tests must be described in the employer's controlled substance and alcohol policy and may be conducted for up to 1 year from the time that the employer first requires a follow-up test.

(4) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to suspect that an employee's faculties are impaired on the job as a result of the use of a controlled substance or alcohol consumption. An employer shall comply with the supervisory training requirement in 49 CFR, part 382.603, whenever the employer requires a test on the basis of reasonable suspicion.

(5) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of \$1,500.

39-2-209. Employee's right of rebuttal. The employer shall provide an employee who has been tested under any qualified testing program described in {section 39-2-208} with a copy of the test report. The employer is also required to obtain, at the employee's request, an additional test of the urine split sample by an independent laboratory selected by the person tested. The employer shall pay for the additional tests if the additional test results are negative, and the employee shall pay for the additional tests if the additional tests are positive. The employee must be provided the opportunity to rebut or explain the results of any test.

39-2-210. Limitation on adverse action.

No adverse action, including follow-up testing, may be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed.

39-2-211. Confidentiality of results.

(1) Except as provided in subsection (2) and except for information that is required by law to be reported to a state or federal licensing authority, all information, interviews, reports, statements, memoranda, or test results received by an employer through a qualified testing program are confidential communication and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding.

(2) Material that is confidential under subsection (1) may be used in a proceeding related to:

(a) legal action arising out of an employer's implementation of {sections 39-2-205 through 39-2-211}; or

(b) inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$1,500 when there is reason to believe that the tested employee may have caused or contributed to the accident.

Testing Requirements

The Montana State Legislature in 1997 adopted the Workforce Drug and Alcohol Testing Act, which was signed into law by Governor Marc Racicot. The law establishes criteria for drug and alcohol testing of employees and prospective employees. The law also provides for confidentiality of test results except in certain circumstances.

Employee Notice

Alcohol or controlled substance testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer. The written policies and procedures must be available for review by all employees 60 days before the terms are implemented or changed. Controlled substance and alcohol testing procedures must conform to 49 CFR, part 40.

Under federal requirements, employers must inform employees being tested for alcohol or controlled substance abuse that the test is required under DOT regulations.

Who can be Tested?

Montana law allows drug and alcohol testing of employees who have safety, security, or fiduciary duties, or who work in "hazardous work environments," which includes, but is not limited to positions for which controlled substance and alcohol testing is mandated by federal law, such as:

- aviation
- commercial motor carrier
- railroad
- pipeline
- commercial marine employees

that involve the operation of or work in proximity to:

- construction equipment
- industrial machinery
- mining activities

that involve handling or proximity to:

- flammable materials
- explosives
- toxic chemicals, or
- similar substances

No employer should begin a controlled substance and alcohol testing program without a thorough legal review of applicable Montana statutes. Please consult your attorney.

Commercial Motor Vehicle Employers and Drivers

The guidelines below apply to commercial drivers. The guidelines were developed in accordance with rules and regulations established by the Federal Highway Administration (FHWA). All drivers required to have a commercial drivers license (CDL) are covered by federal controlled substance and alcohol testing rules. This includes all interstate and intrastate truck and motor coach operations.

Examples of drivers and employers subject to these rules are:

- Commercial truck or bus operators
- Self-employed drivers
- Federal, state, tribal and local governments
- Church and civic organizations
- For-hire motor carriers
- School bus drivers
- Farmers and custom harvesters
- Commercial Transportation Employers and Operators
- Employees who perform safety-sensitive functions in commercial transportation (aviation, rail, and transit industries) are covered by federal controlled substance and alcohol testing rules.

Examples of employers and employees subject to these rules are:

- Pilots and airlines
- Pipeline employees
- Commercial mariners
- Railroad employees
- Air traffic controllers

These guidelines generally apply to persons performing safety-sensitive functions in commercial transportation operations. However, the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and the Research and Special Programs Administration (RSPA) have each established rules and regulations specific to their covered industries. Employers regulated by any of these federal agencies should review their specific rules.

Testing- Who Pays?

Under Montana law, initial alcohol and controlled substance testing must be at the employer's expense. All employees must be paid at the employee's regular rate, including benefits, for time attributable to the testing program.

Tests

Testing for alcohol and controlled substance abuse must be conducted according to the terms of written policies and procedures adopted by the employer. Criteria for establishing a qualified testing program under Montana state law can be found in the "Montana Workforce Drug and Alcohol Testing Act" section of this manual, pages 4-8.

Alcohol Testing

Alcohol testing is done using evidential breath testing (EBT) and non-evidential breath testing devices approved by the National Highway Transportation Safety Administration (NHTSA). Anyone who conducts alcohol testing must be trained to operate the EBT and proficient in breath testing procedures. Individuals who successfully complete training are referred to as breath alcohol technicians (BAT). BAT training is available through DOT.

Drug Testing

Drug testing is done solely by urinalysis. All urine specimens are analyzed for the following controlled substances:

- Marijuana (THC metabolite)

- Cocaine

- Amphetamines

- Opiates (including heroin)

- Phencyclidine (PCP)

All controlled substance test results are reviewed and interpreted by a medical review officer (MRO) before they are reported to the employer.

Pre-employment Tests

An employer may test any prospective employee in a qualified position as a condition of hire. Pre-employment tests for controlled substances are administered before applicants are hired or after an offer to hire, but before performing safety-sensitive functions for the first time.

Testing of Independent Contractors

Montana law does not apply to independent contractors. Under federal law, an employer who uses an independent contractor to perform safety-sensitive functions more than once a year must verify the driver participated in a controlled substances testing program once every six months.

Post-Accident Tests

Under federal law, post-accident tests for alcohol and controlled substances are conducted after an accident involving a commercial motor vehicle on surviving drivers who: were performing safety-sensitive functions during a fatal accident; or received a citation under state or local law for a moving traffic violation arising from the accident. Under federal law, tests must be conducted as soon as practical after the accident but within two hours following the accident for alcohol and 32 hours after the accident for controlled substances.

Under Montana law, an employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of \$1,500.

Reasonable Suspicion Tests

Montana law says employers may require an employee subject to state statute to submit to a controlled substance or alcohol test when there is "reason to suspect" an employee's faculties are impaired on the job as a result of the use of a controlled substance or alcohol consumption.

Random Tests

Random tests are intended to deter employees from alcohol misuse and drug abuse. Generally, those subject to testing are randomly selected, using scientifically valid methods, from a "pool" of covered employees, which must include all supervisory and managerial employees in covered positions. In general under Montana law, the random testing process must also include:

an established calendar period for testing;

an established testing rate within the calendar period;

a procedure which requires the employer to obtain a signed statement from each employee that confirms that the employee has received a written description of the random selection process. The employer is required to maintain the statement in the employee's personnel file.

Consortia Random Testing Pools

Employers may combine their covered employees with covered employees from other organizations into one random testing pool.

Return-To-Duty Tests

Return-to-duty tests are conducted when a person who has violated the prohibited alcohol conduct or controlled substance standards returns to performing covered duties.

Follow-up Tests

An employer may require an employee to submit to follow-up tests if the employee has had a verified positive test for a controlled substance or for alcohol. Under Montana law, follow-up tests may be conducted up to one year after the employer first requires a follow-up test.

Notification of Test Results

Employers must notify tested employees (applicants) of the results of a pre-employment controlled substance test within 60 days of being notified of their rejection (or acceptance) for employment (if the employee requests such results).

Record Keeping

General Requirements Employers are required to keep detailed records of their alcohol misuse and controlled substance use prevention programs. In general, all records relating to the following categories will need to be maintained:

- The collection process
- Each employee's test results
- Violations
- Evaluations
- Education and training
- Drug testing

Confidentiality

Controlled substance and alcohol testing results and records must be maintained under strict confidentiality and may not be disclosed to anyone except:

- the tested employee;
- the designated representative of the employer; or
- in connection with any legal or administrative claim arising out of the employer's implementation of or in response to inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$1,500, when there is reason to believe the tested employee may have caused or contributed to the accident.

Employee's Right of Rebuttal

An employee tested under any qualified testing program must be provided by the employer with a copy of the test report. The employee must be given a chance to rebut or explain the results of any test. According to Montana statute, no adverse action, including follow-up testing, may be taken by the employer if the employee presents a "reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption."

The employer is also required to obtain, at the employee's request, an additional test of the urine split sample by an independent laboratory selected by the person tested. The employer pays for the additional tests if the additional test results are negative. The employee pays for the additional tests if the additional test results are positive.

Liability Concerns

Alcohol and controlled substance testing programs should be carefully developed and monitored to ensure the employee and employer are protected. Before starting any alcohol or controlled substance abuse testing program, consult your attorney for information concerning employee privacy rights, accommodations for individuals with drug and alcohol problems, the Americans With Disabilities Act, the Montana Human Rights Act, and the Family and Medical Leave Act.

Glossary

Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol Concentration - 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.

Alcohol Use - The consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

Americans with Disabilities Act (ADA) - (Pub. L. 101-36) Title I of the ADA covers employers who have fifteen or more employees for more than 20 calendar weeks in a year. Covered employers may not discriminate against a qualified individual with a disability with respect to applications, hiring, advancement, discharge, compensation, or other terms, conditions or privileges of employment.

Breath Alcohol Technician (BAT) - A person who instructs and assists individuals in the alcohol testing process and operates an EBT.

Chain of custody - Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form (see CFR 49 part 40.23(a)) be used from time of

collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody forms account for the sample within the laboratory. *Collection site* - A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Commerce - 1. Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and, 2. Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial motor vehicle - A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or 2. Has a gross vehicle weight rating of 26,001 or more pounds; or 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 and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation test - For alcohol, a second test, following a screening test with a result of 0.02 or greater, that provides an exact measure of alcohol concentration. For controlled substances testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

Consortium - In context of this guide, a group or association of employers or contractors, that provides alcohol or controlled substances testing and acts on behalf of the employers.

Controlled Substance - For the purposes of this guide, a controlled substance is any drug or other substance that impairs the ability or alertness of an employee performing a safety-sensitive function, regardless of whether the substance is legal or illegal. Legally, a controlled substance is a drug or other substance, or immediate precursor, listed in 21USC 812 (Controlled Substance Act). The term does not include distilled spirits, wine, malt beverages, or tobacco.

DOT agency - An agency of the United States Department of Transportation administering regulations related to drug or alcohol testing, including the United States Coast Guard (for drug testing purposes only), the Federal Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the Federal Transit Administration, the Research and Special Programs Administration, and the Office of the Secretary.

DPHHS - The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Driver - 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 the purposes of pre-employment/pre-duty testing only, the term driver includes a person applying to an employer to drive a commercial motor vehicle.

Employee - An individual designated in law or regulation as subject to drug testing and/or alcohol testing. As used in this guide, "employee" includes an applicant for employment.

Employer - Any entity employing one or more employees that is subject to regulations requiring compliance with controlled substance and alcohol testing (including federal, state, tribal, and local governments). The term employer includes an employer's agents, officers, representatives, consortium, or joint enterprise comprised of two or more employing entities.

Evidential Breath Testing Device (EBT) - An EBT is approved by the National Highway Traffic Safety Administration (NHTSA) for evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming with the model specifications available from the NHTSA, Office of Alcohol and State Programs. As of October 1, 1997, EBTs are considered evidentiary.

Family and Medical Leave Act of 1993 (FMLA) - provides certain protections for employees with "serious health conditions." The statute's protections apply only to employers with 50 or more employees and employees who work for such an employer at least 1250 hours during a 12-month period.

Intrastate - commerce or trade that is begun, carried on, and completed wholly in a state.

Medical Review Officer (MRO) - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Performing (a safety-sensitive function) - An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Refuse to submit (to an alcohol or controlled substances test) - An employee:

1. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part; or,
2. Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or
3. Engages in conduct that clearly obstructs the testing process.

Safety-sensitive function - Any on-duty work task, activity, or duty that has potential of causing significant physical or mental injury to people or damage to property. The focus is on function rather than job description. A person's job may require several different functions, some of which are not safety-sensitive. For commercial drivers, safety sensitive functions are defined as the following on-duty activities (see CFR 49 part 395.2):

1. All time at a carrier 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 motor carrier.
2. All time inspecting equipment as required by CFR 49 part 392.7 and 392.8, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
3. All time spent at the driving controls of a commercial motor vehicle. Also known as driving time.

4. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth.

5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, or other related activities.

6. All the time repairing, obtaining assistance, or remaining in attendance upon a commercial motor vehicle.

Screening test (also known as initial test) - In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, an immunoassay screen to eliminate "negative" urine specimens from further consideration.

Substance abuse professional - A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Resources

Forms and Training Materials

The Federal Government Printing Office (GPO) has DOT forms and manuals available to comply with 49 CFR Parts 40 and 382.

The order telephone number for GPO is:

Voice 202-512-1800

Fax 202-512-2250

The NHTSA Breath Alcohol Technician Training Course required by 49 CFR Part 382 and 49 CFR 40.51(a)(2) is available through the Federal Government Printing Office.

Description Order #

Breath Alcohol Technician (BAT) Training Course

Teacher Manual 050 - 000 - 00551 - 8.

Student Workbook 050 - 000 - 00550 - 0.

DOT Screening Test Technician (STT) Training Course 050 - 000 - 00559 - 3.

DOT Breath Alcohol Testing Form 050 - 000 - 00556 - 9.

Federal Drug Testing Custody and Control Form 050 - 000 - 00558 - 5.

Technical Assistance

Person-to person technical assistance may be obtained from:

Federal Highways Administration safety specialists in:

Montana 406-441-1222

Montana Department of Transportation Safety Specialists:

Organizational Development Bureau, Helena 406-444-6054

Montana Highway Patrol

Motor Vehicle Inspection Bureau, Helena 406-444-3300 Fax On Demand

The Office of the Secretary of Transportation offers a "Fax-On-Demand" service.

This free service allows access to various alcohol and drug testing information items.

Using a touch-tone telephone, dial 1-800-225-3784
FHWA Online Services
Federal Highway Administration Electronic Bulletin Board System (FEBBS)
FEBBS 800 no.: 800-337-3492
14.4K Baud: 202-366-3764
2400-9600 Baud: 202-366-3175
FEBBS telnet: febbs.dot.gov
FEBBS HELP - Call FHWA Help Desk 202-366-1120

Drug and Alcohol Abuse Information

Addictive and Mental Disorders Division, Montana Department of Public Health and Human Services

Help with Montana community resources and educational materials

Helena 406-444-2827

Toll-free number: 800-457-2327

National Clearinghouse for Alcohol and Drug Information

The National Clearinghouse for Alcohol and Drug Information (NCADI) serves as the information service of the Center for Substance Abuse Prevention of the U.S. Department of Health & Human Services. NCADI is the world's largest resource for current information and materials about alcohol and other drugs. NCADI provides current information regarding alcohol, tobacco, and other drugs; prevention; demographics; research; and/or resource referrals. Almost all publications are available without charge to the public. NCADI can be reached toll-free at 1-800-729-6686. Telecommunications Device for the Deaf (TDD) number is 1-800-487-4889.

NCADI Online Services The NCADI BBS (PREVline) Modem: 301-770-0850

The NCADI BBS (PREVline) Telnet: ncadi.health.org

The NCADI World Wide Web server: <http://www.health.org/>

The NCADI Gopher: <gopher.health.org>

The NCADI FTP site: <ftp.health.org>

Send E-mail to NCADI: info@prevline.health.org

Laboratories

Over 90 federally-certified drug testing laboratories are located throughout the United States. The current list of federally-approved laboratories is published monthly in the Federal Register. Information on regional laboratories is available from the state and federal sources listed above.

Related Resources

Drug Abuse in the Workplace: Employer's Guide for Prevention, Washington, D.C., U.S. Chamber of Commerce (1988).

National Substance Abuse service: 1-800 435-7327.

ADA Regional Disability and Business Technical Assistance Center Hotline, 1-800-949-4232

(voice/TTY).

U.S. Equal Employment Opportunity Commission, 1801 L Street NW, Washington, D.C., 20507, 1-800-669-4000 (voice),

1-800-800-3302 (TTY), or 1-800-669-EEOC (publications-voice).

There are a number of organizations that can provide information about drug and alcohol problems and assist individuals with such problems. Some of these are:

Employee Assistance Professional Association, 4601 North Fairfax Drive, Suite 1001, Arlington, VA, 22203, 703-522-6272.

Job Accommodation Network, 918 Chestnut Ridge Road, Suite 1, Morgantown, WV 26506-6080, 1-800-ADA-WORK (voice/TTY).

Legal Action Center, 153 Waverly Place, New York, NY, 10014, 212-243-1313, and 236 Massachusetts Avenue, N.E., Suite 510, Washington, D.C., 20002, 202-544-5478.

The Workplace Center, Columbia University, School of Social Work, 622 West 113th Street, New York, NY, 10025, 212-854-5458.

Primary Reference Documents

Americans with Disabilities Act

Controlled Substances Act

Controlled Substances & Alcohol Use and Testing. 49 CFR part 382. Revised Sept. 22, 1995

Drug-Free Workplace Act

The Family and Medical Leave Act of 1993

Limitations on Alcohol Use by Transportation Workers. Common Preamble for DOT agencies.

DOT publication. February 15, 1994

Montana Workforce Drug and Alcohol Testing Act Sections 39-2-205, through 39-2-211, MCA

Montana Human Rights Act

Montana Motor Carrier Safety Regulations Guidelines. 1995

Omnibus Transportation Employee Testing Act of 1991.

Procedures for Transportation Workplace Drug Testing Programs. 49 CFR part 40. Revised April

20, 1995

Regulatory Guidance, Part 382, Controlled Substances & Alcohol Use and Testing. DOT 1995

Supplemental Information and Analysis, Part 382, Controlled Substances & Alcohol Use and

Testing. DOT publication. March 17, 1994