

# MANAGEMENT DIRECTIVE

## Commonwealth of Pennsylvania Governor's Office

<b>Subject:</b> Commercial Driver License Drug and Alcohol Testing Requirements	<b>Number:</b> 505.34
<b>Date:</b>  July 25, 2013	<b>By Direction of:</b>  Kelly Powell Logan, Secretary of Administration
<b>Contact Agency:</b> Office of Administration, Office for Human Resources Management, Bureau of Employee Benefits and Services, Telephone 717.787.8575	

**This directive establishes policy, responsibilities, and procedures for drug and alcohol testing for employees whose jobs or positions require them to possess a Commercial Driver's License (CDL) and perform safety-sensitive duties. Issued as a companion to this directive is *Manual 505.5, Commercial Driver License Drug and Alcohol Testing and Related Procedures.***

- 1. PURPOSE.** To establish policy, responsibilities, and procedures for drug and alcohol testing for employees required to possess a CDL and perform safety-sensitive duties.
- 2. SCOPE.** This directive applies to all departments, boards, and commissions under the Governor's jurisdiction and to those independent agencies that employ individuals required to possess a CDL and that participate in the State Employee Assistance Program (SEAP) (hereinafter referred to as "agencies").
- 3. OBJECTIVE.** To provide uniform guidelines for agencies to administer drug and alcohol testing in accordance with the *Federal Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. § 31306, as amended*, and applicable federal regulations.
- 4. DEFINITIONS.**
  - a. Accident.** An occurrence involving a commercial motor vehicle (CMV) operating on a public road which results in:
    - (1)** A fatality, or

- (2) Bodily injury to any person who immediately receives medical treatment away from the scene, or
  - (3) One or more motor vehicles incurring disabling damage as a result of the accident, requiring that the motor vehicle be towed away from the scene.
- b. **Adulterated Specimen.** A urine sample that has been altered due to the addition of substance(s) in an attempt to destroy the drug/drug metabolite(s) or interfere with the test(s).
  - c. **Alcohol.** The intoxicating agent in beverage alcohol, ethyl alcohol (ethanol), or other low molecular weight alcohols, including methyl and isopropyl alcohol.
  - d. **Alcohol Use.** The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
  - e. **CDL Referral Agreement.** An employer based referral to SEAP, whereby an employee who has tested positive for alcohol and/or drugs, and who is not terminated, must be evaluated by a substance abuse professional, successfully engage in the recommended course of treatment, and have negative return-to-duty tests for both drugs and alcohol prior to being returned to safety-sensitive duties.
  - f. **Collection Facility.** A fixed or mobile facility that provides services for the collection of specimens from employees to be analyzed for the presence of drugs and/or alcohol.
  - g. **Commercial Motor Vehicle (CMV).** A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle has a gross vehicle weight rating in excess of 26,000 pounds inclusive of a towed unit with a gross vehicle weight rating in excess of 10,000 pounds, or has a gross vehicle weight rating in excess of 26,000 pounds, or is designed to carry 16 or more passengers (including the driver), or is of any size and is used in the transportation of hazardous materials and which require the vehicle to be placarded. Modifying a vehicle to transport fewer than 16 passengers (i.e., removing seats to accommodate wheel chairs or other equipment) does not change the designation of the vehicle as a CMV.
  - h. **Controlled Substances.** All substances as defined by *21 U.S.C. § 802* and includes all substances listed on Schedules I through V as they may be revised from time to time (*21 C.F.R. § 1308*).
  - i. **Designated Employer Representative (DER).** An employee authorized by the employer to take immediate action(s) to ensure that employees are removed from safety-sensitive duties, to make required decisions in the testing and evaluation process, and to receive test results and other communications for the employer. The DER is located in the Office of Administration, Office for Human Resources Management (OA/HRM), Bureau of Employee Benefits and Services, Workplace Support Services Division.
  - j. **Diluted Specimen.** A urine sample that has been watered down, usually achieved by consuming large quantities of fluids prior to testing or by adding water to the sample.

- k. **Drug.** A controlled substance.
- l. **Evidential Breath Testing (EBT) Device.** A device approved by the National Highway Traffic Safety Administration for the evidential testing of breath.
- m. **Medical Review Officer (MRO).** A licensed physician (doctor of medicine or 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 employee's test result(s) together with the employee's medical history and any other biomedical information.
- n. **Reasonable Suspicion.** A belief that the employee has violated the alcohol or controlled substance prohibitions, based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.
- o. **Refusal to Test.** A refusal to test is considered to be a positive test result. Refusal to test includes:
  - (1) Failing to appear for any test or failing to remain at the testing site until the testing process is complete (except pre-employment testing for an applicant for employment);
  - (2) Refusal or failure to provide adequate breath for alcohol testing, without adequate medical explanation, after the employee has received notice of the requirement for breath testing;
  - (3) Refusal or failure to provide a sufficient quantity of urine for controlled substances testing, without adequate medical explanation, after the employee has received notice of the requirement for urine testing;
  - (4) Failing to cooperate with any part of the testing process, including engaging in conduct that obstructs or disrupts the testing process;
  - (5) Failing or declining to take a second test as directed by the employer or the collector;
  - (6) Failing to undergo a medical examination or evaluation as directed by the MRO or the employer; or
  - (7) Being reported by the MRO as having a verified adulterated or substituted test result.
- p. **Safety-Sensitive Duties.** The list of duties defined as safety-sensitive include:
  - (1) Waiting to be dispatched to a CMV at a carrier or shipper plant, terminal, facility, or other property, unless the driver has been relieved from duty by the employer;

- (2) Inspecting equipment as required by the Federal Motor Carrier Safety Regulations or otherwise inspecting, servicing, or conditioning any CMV at any time;
  - (3) Operating a CMV;
  - (4) Being in or on a CMV (except for time spent in a sleeper berth);
  - (5) Loading or unloading a CMV, supervising or assisting in the loading or unloading, attending a CMV being loaded or unloaded, remaining in readiness to operate the CMV, or in giving or receiving receipts for shipments loaded or unloaded; and
  - (6) Repairing, obtaining assistance, or remaining in attendance upon a disabled CMV.
- q. **Self-Disclosure.** The admission by a CDL employee, made prior to performing safety-sensitive duties (e.g., prior to reporting for duty) that he/she is misusing alcohol and/or using controlled substances. An employee making such an admission after being notified of a drug and/or alcohol test does not qualify as a self-disclosure.
- r. **Self-Disclosure Referral.** An employer based referral to SEAP, whereby the employee who has made a self-disclosure must be evaluated by a chemical abuse expert, successfully complete the recommended course of treatment, and have negative return-to-duty tests for both drugs and alcohol prior to being returned to safety-sensitive duties.
- s. **State Employee Assistance Program (SEAP).** A program designed to assist state employees and their families with alcohol, drug, emotional, family, financial, marital, or personal problems. SEAP policies and procedures are contained in *Executive Order 1996-10, Management Directive 505.22, and Manual 505.3.*
- t. **Substance Abuse Professional (SAP).** A licensed physician (doctor of medicine or osteopathy), a licensed or certified social worker, a licensed or certified psychologist, a licensed or certified employee assistance professional, a licensed or certified marriage and family therapist, or a certified drug and alcohol counselor with knowledge and experience in diagnosing and treating alcohol and controlled substance-related disorders, knowledge of the federal Department of Transportation regulations, and qualification training in the SAP role.
- u. **Substituted Specimen.** A specimen that is not a urine sample from the employee being tested. It may be another person's urine or some other liquid.
- v. **Third Party Administrator (TPA).** The vendor with whom the commonwealth contracts to provide services related to drug and alcohol testing in accordance with the *Federal Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. § 31306, as amended*, and applicable federal regulations.

## 5. POLICY.

- a. Pursuant to the *Federal Omnibus Transportation Employee Testing Act of 1991*, 49 U.S.C. § 31306, as amended, and applicable federal regulations, specifically 49 C.F.R. parts 40, 382 and 392, CMV operators are required to be tested for the use of alcohol and controlled substances and are subject to the following prohibitions regarding alcohol and controlled substances:
- (1) reporting for duty or remaining on duty requiring the performance of safety-sensitive duties while having an alcohol concentration of .04 or greater, or when possessing or using any drug or substance identified in 21 C.F.R. § 1308.11, Schedule I;
  - (2) possessing alcohol while performing safety-sensitive duties, unless the alcohol is manifested and transported as part of a shipment,
  - (3) using alcohol while performing safety-sensitive duties, or within 4 hours prior to performing safety-sensitive duties;
  - (4) using alcohol for 8 hours following an accident or until s/he undergoes a post-accident alcohol test, whichever occurs first;
  - (5) reporting for duty or remaining on duty requiring the performance of safety-sensitive duties when possessing or using any non-Schedule I drug or substance that is identified in the other Schedules in 21 C.F.R. § 1308, except when the use is pursuant to the instructions of a licensed medical practitioner who is familiar with the employee's medical history and who has advised the employee that the substance will not adversely impact his/her ability to safely operate a CMV;
  - (6) refusing to submit to a required alcohol or drug test;
  - (7) reporting for duty or remaining on duty requiring the performance of safety-sensitive duties after testing positive for alcohol and/or drugs; and
  - (8) performing safety-sensitive functions within 24 hours after an alcohol test with a result indicating an alcohol concentration of .02 or greater but less than .04.
- b. All employees appointed, promoted, transferred, or reassigned into positions whose job duties require them to drive a CMV, even on an occasional, infrequent, emergency or one-time only basis, are required to possess a CDL and participate in the drug and alcohol testing program as outlined in *Manual 505.5, Commercial Driver License Drug and Alcohol Testing and Related Procedures*.

## 6. RESPONSIBILITIES.

a. TPA shall:

- (1) Provide a network of collection facilities statewide, with 24/7 access.

- (2) Provide all needed supplies for specimen collection and shipping to collection facilities and agencies.
- (3) Provide laboratory services for the analysis of collected specimens.
- (4) Provide MRO services to verify drug test results.
- (5) Develop a monthly random drug and alcohol test list using appropriate software and provide it to the DER.
- (6) Provide copies of all drug and alcohol test results to the DER and employees.
- (7) Provide semi-annual and annual reports of drug and alcohol test results to the DER.
- (8) Maintain records in accordance with federal regulations.
- (9) Participate in the delivery of training to individuals who supervise CDL employees.

**b. OA/HRM, Bureau of Employee Benefits and Services shall:**

- (1) Develop and establish overall policy.
- (2) Administer the contract with the TPA.
- (3) Serve as the DER.
- (4) Serve as the point of contact for the agencies and the TPA.
- (5) Oversee the administration of program activities by working with participating agencies, unions, and the TPA to ensure all program activities are coordinated and appropriate communication occurs.
- (6) Provide the TPA with a monthly listing of all CDL employees.
- (7) Invoice participating agencies for training and testing costs incurred based upon a per employee charge.
- (8) Develop educational and training material to be provided to CDL employees and supervisors to explain the drug and alcohol testing requirements and applicable policies regarding drug and alcohol use and consequences.
- (9) Coordinate with the State Civil Service Commission (SCSC) and OA/HRM, Bureau of State Employment to ensure that employment/recruitment material includes information on CDL and drug/alcohol testing.
- (10) Conduct training for agency CDL Coordinators and agency CDL supervisors.

- (11) Notify agency CDL Coordinators of the selection of their employee(s) for random testing, and the need for return-to-duty or follow-up testing.
- (12) Notify agency CDL Coordinators of negative test results for pre-employment, reasonable suspicion, post-accident and return-to-duty tests promptly.
- (13) Notify agency CDL Coordinators of positive test results immediately upon receipt from the MRO.
- (14) Provide agency CDL Coordinators with periodic reports containing information about their agency's CDL employees and supervisors.

**c. Agency Heads shall:**

- (1) Ensure that all aspects of the CDL program as outlined in this directive and accompanying manual are implemented within their agency.
- (2) Ensure that OA is reimbursed in a timely manner for the testing and training costs for the agency's CDL employees.

**d. Agency Human Resource (HR) Directors shall:**

- (1) Assign the role of CDL Coordinator to a confidential management level employee, preferably assigned to the HR office.
- (2) Assign the role of field CDL Coordinator, as needed, in agency field sites.
- (3) Ensure that all job descriptions for CDL covered positions contain reference to CDL requirements.
- (4) Coordinate with OA classification staff to ensure that all appropriate jobs contain reference to CDL requirements, and to discuss any changes, deletions and/or additions to the list of jobs with CDL requirements.
- (5) Ensure that applicable agency vacancy announcements and literature contain information regarding CDL drug/alcohol policy testing requirements and CDL licensing provisions.
- (6) Ensure that all required background checks for applicants for CDL positions are completed.
- (7) Ensure that orientation information for CDL employees reflects the policies, procedures, testing requirements, and consequences mandated by this program.
- (8) Ensure that the motor vehicle record for each employee is obtained annually and reviewed in conjunction with the employee's annual self-report of violations of motor vehicles laws and ordinances.
- (9) Ensure that agency procedures are established to ensure that testing occurs as required, including escorting (transporting) employees as required.

- (10) Ensure that internal agency procedures are established to ensure the integrity of the testing process.
- (11) Ensure that agency procedures are established for dealing with CDL employees who test positive for drugs and/or alcohol.
- (12) Ensure that agency procedures are established for dealing with CDL employees who make a self-disclosure regarding drugs and/or alcohol.
- (13) Ensure that strict confidentiality procedures are established and followed for the employee notification of testing and testing results.

**e. Agency CDL Coordinators shall:**

- (1) Ensure that all jobs and/or positions within their agency which are required to operate a CMV, even on an infrequent or emergency basis, are appropriately coded.
- (2) Ensure that employees appointed, promoted, or transferred into CDL-covered positions are provided CDL educational materials prior to performing safety-sensitive duties and that signed documentation attesting to the receipt of the materials is placed in their Official Personnel Folders (OPF).
- (3) Ensure that all positions that supervise CDL employees are appropriately coded.
- (4) Ensure that all individuals that supervise CDL employees receive the federally required CDL supervisory training as soon as possible after assuming the supervisory position, and that signed documentation attesting to the completion of the training is placed in their OPF.
- (5) In a confidential manner, notify field CDL Coordinators and/or supervisors of the selection of their employee(s) for random testing, or the requirement for return-to-duty or follow-up testing.
- (6) Ensure that all required testing has been completed.
- (7) In a confidential manner, notify field CDL Coordinators and/or supervisors of negative pre-employment, reasonable suspicion, post-accident and return-to-duty tests, and all positive tests.
- (8) Review the periodic reports provided by OA of agency CDL-covered employees and supervisors for accuracy, and ensure necessary corrective actions are taken.
- (9) Ensure that all appropriate agency managers are aware of CDL drug/alcohol policy and program requirements, and that all aspects of the CDL program policies and procedures are coordinated and implemented within the agency.

- (10) Coordinate with the agency SEAP Coordinator in situations involving self-disclosures and positive test results.
- (11) Ensure that CDL covered employees complete the required annual recertification of violations of motor vehicles laws and ordinances.
- (12) Establish a monitoring/audit function for compliance with policy and procedures in agencies that have field CDL Coordinators.

**f. SEAP shall:**

- (1) Coordinate and monitor the evaluation and treatment of CDL employees who have tested positive for drugs and/or alcohol and who have signed a CDL Referral Agreement.
- (2) Coordinate and monitor the evaluation and treatment of CDL employees who have made a self disclosure regarding drugs and/or alcohol.
- (3) Communicate with OA/HRM and the agency SEAP Coordinator regarding employee compliance with the CDL Referral Agreement or Self-Disclosure Referral requirements.

**g. Supervisors of CDL Employees shall:**

- (1) Ensure that appropriate negative test results have been received before permitting a CDL employee to perform safety-sensitive duties.
- (2) Attend CDL supervisory training at their first opportunity and complete any subsequent training that may, from time to time, be deemed necessary by the agency or OA/HRM.
- (3) In a confidential manner, notify employees of their selection for random testing or the requirement for follow-up testing, without providing any advance notice.
- (4) Determine the need for reasonable suspicion or post-accident testing and ensure that such testing occurs immediately.
- (5) Make appropriate arrangements for escorting those CDL employees who must be transported to a collection site to be tested because of the type of test or because of previous diluted test results.

**h. Employees shall cooperate with the requirements of applicable federal and state law and all commonwealth policies and procedures regarding CDL drug and alcohol testing.**

**7. PROCEDURES.** Refer to *Manual 505.5, Commercial Driver License Drug and Alcohol Testing and Related Procedures.*