

Policy

No. 424 (4219)

**Board of Education
Nutley****NONPROFESSIONAL
STAFF**

COMMERCIAL DRIVER CONTROLLED SUBSTANCES AND ALCOHOL USE TESTING

The Board of Education is committed to a safe, efficient and drug-free work place, which protects the district's most valuable resource, its pupils -- as well as the health and safety of its employees and the general public. The Board requires that all drivers performing any safety-sensitive function are free of drugs and alcohol. Safety-sensitive function means any on duty function as defined by 49 C.F.R. 395.2 including:

1. All time at the terminal facility or any public property waiting to be dispatched unless relieved from duty;
2. All time inspecting equipment;
3. All driving time;
4. All time other than driving time in or upon the commercial vehicle except in an area defined as a sleeping berth;
5. All time loading and unloading;
6. All time spent performing driver requirements related to accidents, and
7. All time repairing, obtaining assistance or remaining in attendance with the vehicle.

The Omnibus Transportation Employee Testing Act requires all operators of commercial motor vehicles subject to the Commercial Drivers License requirements to be tested for controlled substances and alcohol. Federal regulations of the U.S. Department of Transportation require that school bus drivers as well as drivers of private carriers of passengers contracted by the Board be required to submit to alcohol and controlled substance testing. The Board designates the Transportation Coordinator as the officer of the Board responsible for the implementation of this policy.

BOARD OF EDUCATION
NUTLEY

Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 2

NONPROFESSIONAL
STAFF

Prohibited Substances

The presence of any of the following controlled substances in the body, as evidenced by the results of the initial screening and subsequent confirmatory analysis provided in the policy, is prohibited for any employee assigned to a classification covered by this policy.

No driver at any work site will possess, manufacture, use, sell, or distribute any quantity of any controlled substance, lawful or unlawful, which in sufficient quantity could result in impaired performance, with the exception of substances administered by or under the instructions of a physician.

Definitions

"Work Site" means any motor vehicle, office, building, yard or other location at which the driver is to perform work.

"Possess" means either in or on the driver's person, personal effects, motor vehicle or areas substantially entrusted to the control of the driver.

Any violation of this policy and its accompanying regulations will result in discipline, up to and including termination.

Prohibited substances include:

- A. marijuana;
- B. cocaine;
- C. opium or opiates (including heroin, morphine and codeine);
- D. phencyclidine (pcp);
- E. amphetamines or methamphetamines;
- F. other controlled substance, or;
- G. alcohol;
- H. a prescription drug for which the employee does not have a current, valid, personal prescription or which is not authorized or approved for use while operating a motor vehicle.

BOARD OF EDUCATION
NUTLEYCommercial Driver Controlled Substances and
Alcohol Use Testing - pg 3NONPROFESSIONAL
STAFF

The Board retains the right to add or delete substances from the above list in accordance with law.

Categories of Testing

For the purpose of this policy, the occurrence of the following circumstances/instances shall require an employee to submit to a fitness-for-duty drug/alcohol screening:

A. Pre-Employment -

An individual who has applied for and has been selected to operate a Board vehicle shall, before beginning employment with the Board, submit to a fitness-for-duty drug/alcohol screening in conjunction with the required physical exam, Policy 408 (4160). Such screening shall be conducted in accordance with the procedures set forth in this policy. No individual receiving a positive result from such screening shall be employed by the Board.

An exception to the pre-employment screening may be made if the prospective employee:

1. Has participated in a drug testing program within thirty days prior to date of the application for employment, and;
2. Has participated in a controlled substance testing program within six months prior to the date of the application for employment or participated in a random controlled substances testing program within twelve months of the date of application for employment.

If an individual is so exempted, the Transportation Coordinator shall contact the alcohol and/or controlled substances testing program in which the driver participated and obtain the following information:

1. Name and address of the program.
2. Verification of the driver's participation.
3. Verification that the program conforms to federal guidelines.

**BOARD OF EDUCATION
NUTLEY****Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 4****NONPROFESSIONAL
STAFF**

4. Verification the driver qualified and did not refuse to be tested for either alcohol or controlled substances.
5. The date the driver was last tested for alcohol and controlled substances.
6. The results of any tests taken within the last six months and any other violations.

B. Random Testing

A covered employee shall be subject to submit to a discretionary fitness-for-duty drug/alcohol screening on an unannounced and random basis resulting from the selection by a random generation methodology. Random testing will be spread reasonably throughout any given calendar year. The minimum annual percentage rate for random alcohol testing shall be 25% of the average number of drivers. The minimum rate of random controlled substances testing shall be 50% of the average number of drivers. These rates may be adjusted as determined by the FHWA (Federal Highway Administration) Administrator.

Drivers shall only be random tested when performing safety-sensitive functions or immediately prior to or immediately following the performance of safety-sensitive functions.

C. Post-Accident Testing

The involvement by an employee in a motor vehicle collision while operating a Board vehicle when such accident results in property damage or personal injury, may trigger a post-accident drug and alcohol test. The following occurrences shall require post-accident drug/alcohol screening:

1. An accident by a driver performing safety-sensitive functions with respect to a vehicle, if the accident involves the loss of human life.
2. An accident in which the driver receives a citation under state or local law for a moving violation arising from the accident.

BOARD OF EDUCATION
NUTLEYCommercial Driver Controlled Substances and
Alcohol Use Testing - pg 5NONPROFESSIONAL
STAFF

A driver who is subject to post-accident testing shall remain readily available for such testing or be deemed to have refused to submit for testing. A driver who is injured in an accident and requires medical care shall submit to post-accident drug and controlled substance testing by the medical care facility providing the treatment or a designee of the Board if the facility is unable to provide the testing. Nothing herein shall be construed to prevent the driver from leaving the scene of the accident for the period required to obtain necessary assistance or to obtain emergency medical care.

When the testing for alcohol and controlled substances has not occurred within a reasonable time frame, the following actions shall be taken:

Time Elapsed	Action Required
2 hours	Preparation of a record stating the reason why the testing was not promptly administered
8 hours	Cease attempts to administer alcohol tests and maintain a record stating reasons testing was not promptly administered
32 hours	Cease attempts to administer controlled substance tests and prepare and maintain a record stating the reasons the testing was not promptly administered

D. Reasonable Suspicion Testing

Observed conduct of an employee which is reasonably determined to be suspicious or extraordinary for that employee while on Board property or while working for the Board shall result in testing for reasonable suspicion. Such observed conduct may be physical symptoms including but not limited to slurred or other than the employee's usual speech, irregular or unsteady gait, flushed or agitated appearance, blood shot eyes, dilated pupils, nonsensical or irrational behavior or the smell of alcohol or marijuana. Such conduct must be observed and documented in writing by a trained supervisor and the documentation should be placed in the employee's file within twenty-four hours of submission to a fitness-for-duty drug/alcohol screening.

BOARD OF EDUCATION
NUTLEYNONPROFESSIONAL
STAFFCommercial Driver Controlled Substances and
Alcohol Use Testing - pg 6

Supervisors shall be trained to observe whether reasonable suspicion exists. Such training shall consist of at least 60 minutes of training on alcohol measure and 60 minutes of training on misuse of controlled substances. The training shall cover physical, behavioral, speech and performance indicators of probable misuse of alcohol and controlled substances. In no case shall the training constitute less than 120 minutes.

E. Return to Duty Testing

The Transportation Coordinator shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, the driver shall undergo a return to duty alcohol test indicating a breath alcohol concentration of less than 0.02 and a controlled-substances test with a result indicating a verified negative result for controlled-substances use.

Drivers required to take return-to-duty tests shall be evaluated by a substance abuse professional and participate in any assistance program prescribed by that individual.

This testing applies to an employee who previously tested positive and successfully completed a rehabilitation program and is now returning to duty. Such employees are subject to a minimum of six (6) unannounced, follow-up drug screening and alcohol tests over the following twelve (12) months, but testing shall not exceed sixty (60) months. Alcohol follow-up testing shall be performed only when the driver is performing safety-sensitive functions or immediately prior to performing or immediately after performing safety-sensitive functions.

Medical Review Officer Notifications

The Board shall employ or contract with a medical review officer who is a licensed physician (MD or DO) and shall designate the Medical Review Officer as the individual responsible for receiving laboratory results generated by the testing program. The individual designated as the medical review official shall have knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate the individual's confirmed positive test together with his/her medical history and other biomedical data.

BOARD OF EDUCATION
NUTLEYCommercial Driver Controlled Substances and
Alcohol Use Testing - pg 7NONPROFESSIONAL
STAFF**A. Employer Notification**

The Medical Review Officer may report controlled substances test results to the employer by any means of communication; however, a signed, written notification must be forwarded within three business days of the completion of the Medical Review Official's evaluation.

The Medical Review Official must report to the employer the following:

. That the controlled substances test being reported was in accordance with 49 CFR Part 40.

. The name of the individual for whom the test results are being reported.

. The type of test indicated on the custody and control form (random, pre-employment, etc.)

. The date and location of the test collection.

. The identification of the persons or entities performing the collection, analysis of the specimens, and serving the Medical Review Official for the specific test.

. The verified results of the controlled substances test (positive or negative), and if positive, the identity of the controlled substance(s) for which the test was verified positive.

. That the Medical Review Official has made every reasonable attempt to contact the driver.

B. Employee Notification

Prior to verifying a "positive" result, the Medical Review Official shall make every reasonable effort to contact the driver (confidentially), and afford him/her the opportunity to discuss the test result. If after making all reasonable efforts and documenting them, the Medical Review Official is unable to reach the driver directly, the Medical Review Official shall contact a designated management

**BOARD OF EDUCATION
NUTLEY****Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 8****NONPROFESSIONAL
STAFF**

official, who shall direct the driver to contact the Medical Review Official as soon as possible (within 24 hours).

Under split-sample collection procedures, the driver has 72 hours following notification of a positive result to request the secondary sample be analyzed. In the event a split-sample was not taken, or was of inadequate quantity, the original test would be voided, and the driver would not be subject to a result.

Designated Collection Facility

The Board shall designate the facility to be used for the collection of the specimen; provided, however, that the designated facility shall possess all required licenses and permits and shall have a written procedure for ensuring employee privacy, health and safety, the security, and the chain-of-custody of fluid samples. Such written procedures shall be available to an affected employee, and the Board shall discontinue use of any facility it learns has materially violated mandated procedures which compromised a screening.

Designated Screening Laboratory

The Board shall designate the laboratory to which collected fluid samples will be forwarded for drug/alcohol screening; provided, however, that such a designated laboratory must be certified by the Department of Health and Human Services as meeting the standards of the Mandatory Guideline for Federal Work Place Drug Programs.

Screening Procedure

The Board's designated screening laboratory shall employ methods of initial screening and confirmatory testing which comply with the standards promulgated by Department of Transportation/Federal Highway Administration. A secondary laboratory may not be used unless authorized.

Specimens

The normal screening methodology for controlled substances shall be urinalysis, collected by a representative of the Board at a designated site. The presence of alcohol will be determined by a breathalyzer, administered by a certified employee.

BOARD OF EDUCATION
NUTLEY

NONPROFESSIONAL
STAFF

Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 9

Report of a Positive Screening Result

Positive results of an initial screening which has subsequently been confirmed shall be reported to the Transportation Coordinator by its designated Medical Review Officer (MRO) as provided in the standards promulgated by the Department of Transportation/Federal Highway Administration.

Refusal to Submit

A driver shall be deemed as refusing to submit when the driver:

- A. Fails to provide adequate breath for testing without a solid medical explanation after notice of the requirement for breath testing and/or
- B. Fails to provide adequate urine for a controlled substances test after notice of the requirement for a controlled substance test.
- C. Engages in conduct that clearly obstructs the testing process.

Employee Status Pending Receipt of Results

An employee who is required to submit to a fitness-for-duty screening shall not be assigned to operate a Board vehicle pending the outcome of such screening. Until said time the employee will be suspended without pay. An employee whose fitness-for-duty screening produces a negative result shall be promptly returned to duty and made whole for any regular wages lost while on suspension.

Record of Negative Screening

An employee required to submit to a fitness-for-duty screening as provided in this policy and whose screening results are negative may, at their option, have their personnel file documented to reflect the negative result.

Prescription Drugs

All bus drivers shall notify the Transportation Coordinator of the use of any prescription drugs. The Board may require certification from the prescribing physician that the use of the prescription drug will not have an adverse effect on the driver's ability to properly perform safety-sensitive functions.

**BOARD OF EDUCATION
NUTLEY****Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 10****NONPROFESSIONAL
STAFF****Consequences to Drivers Engaging in Prohibited Conduct**

An employee whose fitness-for-duty screening produces a positive result for a prohibited substance:

- A. Shall not be permitted to perform safety-sensitive functions.
- B. Shall be subject to the disciplinary policies and regulations of the Board as defined in Policy 410 (4150) "Disciplinary Actions", Regulation 4100 (4150R) "Infractions of Non-Instructional Employees", Policy 712 (7436) "Drug Free Work Place", up to and including termination of employment.

In the event the employee is not terminated by the Board the employee shall:

- A. be advised by the Transportation Coordinator of resources available to them in evaluating and resolving problems associated with the misuse of alcohol or the use of controlled substances.
- B. be evaluated by a substance abuse professional who shall determine what assistance, if any, is needed to resolve problems with alcohol or controlled substance use.
- C. undergo, before returning to duty, a return-to-duty alcohol test indicating a breath level of less than 0.02 if the conduct involved alcohol or a controlled substance test with a verified negative result.
- D. be evaluated by a substance abuse professional, if assistance was required, to determine that the employee has followed the rehabilitation program prescribed.
- E. be subject to unannounced follow-up alcohol and/or controlled substance abuse testing.

Return-to-Work Agreement

An employee who has returned to work and who fails to comply with any of the terms of the Return-to-Work Agreement shall be subject to termination.

**BOARD OF EDUCATION
NUTLEY****Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 11****NONPROFESSIONAL
STAFF****Maintenance and Retention of Records**

The Transportation Coordinator shall maintain and retain all records as required by federal regulation. Records shall include at least the following:

A. Records related to the collection process:

1. Collection logbooks (if used);
2. Documents related to the random selection process;
3. Calibration documentation for EBT's;
4. Documentation of Breath Alcohol Technician (BAT) training;
5. Documentation of reasoning for reasonable suspicion testing;
6. Documentation of reasoning for post-accident testing;
7. Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing; and
8. Consolidated annual calendar year summaries.

B. Records related to the driver's test results:

1. Employer's copy of the alcohol test form, including results;
2. Employer's copy of the drug test chain of custody and control form;
3. Documents sent to the employer by the Medical Review Officer;
4. Documentation of any driver's refusal to submit to a required alcohol or controlled substance test; and
5. Documents provided by a driver to dispute results of test.

C. Documentation of any other violations of controlled substance use or alcohol misuse rules**D. Records related to evaluations and training:**

1. Records pertaining to Substance Abuse Professional's (SAP's) determination of driver's need for assistance;
2. Records concerning a driver's compliance with SAP's recommendations, and records related to education and training;
3. Materials on drug and alcohol awareness, including a copy of the employer's policy on drug use and alcohol misuse;
4. Documentation of compliance with requirement to provide drivers with educational material, including driver's signed receipt of materials;
5. Documentation of supervisor training; and
6. Certification that training conducted under this rule complies with all requirements of the rule.

**BOARD OF EDUCATION
NUTLEY****Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 12****NONPROFESSIONAL
STAFF****E. Records related to drug testing**

1. Agreements with collection site facilities, laboratories, Medical Review Officers (MRO's) and consortia;
2. Names and positions of officials and their role in the employer's alcohol and controlled substance testing program;
3. Monthly statistical summaries of urinalysis; and
4. The employer's drug testing policy and procedures.

F. Required period of retention:**Document to be maintained****Period required
to be maintained**

Alcohol test results indicating a
breath alcohol concentration of
0.02 or greater

5 Years

Verified positive controlled
substance test results

Refusals to submit to required
alcohol or controlled substance
tests

Required calibration of Evidential
Breath Testing Devices (EBT's)

Substance Abuse Professional's
(SAP's) evaluations and referrals

Annual calendar year summary

Records related to the collection
process (except calibration) and
required training

2 years

Negative and canceled controlled
substance test results

1 year

Alcohol test results indicating a
breath alcohol concentration less
than 0.02

BOARD OF EDUCATION
NUTLEYCommercial Driver Controlled Substances and
Alcohol Use Testing - pg 13NONPROFESSIONAL
STAFF

G. Location of Records

All required records shall be maintained in Board of Education office and the office of the Board's MRO. Records shall be made available for inspection at the Board Offices within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

H. Annual Calendar Year Summary

The Transportation Coordinator shall prepare and maintain an annual calendar year summary of the results of its alcohol and substance abuse testing programs. The summary shall be completed no later than March 15 of each year covering the previous calendar year. The Transportation Coordinator, upon request of the Federal Highway Administration (FHWA) will provide the annual summary to that agency in the required format.

Employee Information Program

The Board will provide an employee information program. The Transportation Coordinator will be responsible for implementing the program and shall insure that each driver receives information in the manner specified below:

- A. By receiving a copy of this policy and any subsequent revisions.
- B. Through attendance at a meeting at which a detailed discussion of the following is conducted:
 - 1. The identity of the person designated by the employer to answer driver questions about the materials.
 - 2. Which drivers are subject to the alcohol misuse and controlled substance requirements.
 - 3. Explanation of what constitutes a safety-sensitive function so as to make clear what period of the work day the driver is required to be in compliance.
 - 4. Specific information concerning driver conduct that is prohibited.
 - 5. The circumstances under which a driver will be tested for alcohol and/or controlled substances.

BOARD OF EDUCATION
NUTLEY

Commercial Driver Controlled Substances and
Alcohol Use Testing - pg 14

NONPROFESSIONAL
STAFF

6. The procedures that will be used to test for the presence of alcohol and controlled substances.
7. The requirement that a driver submit to alcohol and controlled substance tests.
8. An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test.
9. The consequences for drivers found to have violated the prohibitions of this rule, including the immediate removal of the driver from safety-sensitive functions.
10. The consequences for drivers found to have an alcohol concentration level of 0.02 or greater but less than 0.04.
11. 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 of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

Omnibus Transportation Act of 1991
49 C.F.R. 40 et seq.
49 C.F.R. 382 et seq.
49 C.F.R. 395.2

Date Adopted: 12/19/95
Date Revised:

Regulations

4240 (4219)

**Board of Education
Nutley**

**NONPROFESSIONAL
STAFF**

DOT ALCOHOL AND DRUG TESTING

All employees and applicants for employment that perform duties covered by DOT regulations are covered by these regulations and procedures related to alcohol and drug use. Individuals who serve as drivers of pupil transportation vehicles are covered by these regulations.

Individuals are covered by these regulations and procedures at any time when there is any possibility that they may be required to perform any duties for Nutley Board of Education that are covered by DOT regulations. This means all provisions of these regulations apply, including those requiring no use of alcohol in any form within four hours of performing any such duties, depending upon the applicable DOT prohibition based upon the individual's duties.

The Nutley Board of Education will test individuals for alcohol and drug use, using DOT procedures in the situations and circumstances described in Policy 424 (4219) and these regulations.

These Nutley Board of Education DOT Alcohol and Drug Testing Regulations are in addition to any and all other Nutley Board of Education policies, regulations and procedures related to alcohol and drug use. Individuals are subject to such other Nutley Board of Education policies' and regulations' testing provisions and penalties for policy violations in addition to those described in this regulation. For example, certain positive drug test results or other violations of Policy 424 (4219) and these regulations will result in the consequences required by DOT but also may result in disciplinary action, up to and including discharge, under Nutley Board of Education authority as described in this regulation and in other Nutley Board of Education policies, regulations and procedures and as may be prescribed and/or permitted by law.

All DOT alcohol and drug testing performed on individuals will be in accordance with required DOT procedures. These include the use of special testing forms, trained personnel and special processes and handling to insure the integrity and accuracy of the testing process. Information related to testing will be treated as confidential except as required to comply with DOT requirements, safeguard the safety of personnel and the public, or as otherwise legally required.

BOARD OF EDUCATION
NUTLEY

NONPROFESSIONAL
STAFF

DOT Alcohol and Drug Testing - pg 2

DOT drug testing includes taking urine samples which are sent to federally certified testing laboratories to test for the presence of amphetamines, cannabinoids (marijuana), cocaine, opiates (codeine and morphine), phencyclidine (PCP), and other controlled substances, a prescription drug for which the employee does not have a current, valid personal prescription or which is not authorized or approved for use while operating a motor vehicle. Positive test results will be reviewed by a qualified physician - a Medical Review Officer (MRO) - to determine if the individual has a legitimate medical explanation for a positive test result.

DOT alcohol testing includes the taking of breath samples (and, if authorized by future regulation, blood samples), to test for alcohol concentration. Breath testing equipment used is approved by the National Highway Traffic Safety Administration (NHTSA). An initial breath test will be performed; if any alcohol is detected in a concentration of 0.02 or greater, a second test is performed. Individuals with an alcohol concentration of 0.02 or greater are advised not to perform safety-sensitive duties or operate a vehicle or heavy equipment. Individuals should arrange alternate transportation home from a testing site when alcohol is detected with a concentration of 0.02 or greater.

No individual may perform DOT-covered, safety-sensitive functions if the individual has engaged in conduct prohibited by DOT alcohol/drug rules. (An exception may be made for performance of duties during an emergency in which the individual is the only person able to take an action necessary for public safety. The individual may perform the required action only and then must cease safety-sensitive duties immediately.)

Individuals will undergo alcohol testing as described in these regulations. When alcohol tests are performed, if a confirmed alcohol test result indicates an alcohol concentration of 0.02 or greater, in addition to the consequences described in these regulations and Policy 424 (4219) and any other consequences described in other Nutley Board of Education policies and regulations, personnel at the testing site may: (1) suggest and/or arrange for alternate transportation for the individual, (2) contact law enforcement officials if the individual refuses such alternate transport. The testing site will contact a company representative to report test results.

All applicants for employment to positions that require a commercial driver's license (CDL), or current employees of Nutley Board of Education, who apply for such jobs must sign the Consent and Release of Alcohol and Drug Use and Testing Information Form for each and every employer that the person has worked for in the previous two years.

BOARD OF EDUCATION
NUTLEY

NONPROFESSIONAL
STAFF

DOT Alcohol and Drug Testing - pg 3

Individuals are reminded of the possible consequences of alcohol and drug use. Both alcohol and drugs have proven to affect performance adversely, even in low concentrations. When performing job duties or participating in any other activity in which the performance of the person may affect the safety or health of that person or others, no amount of alcohol or drug use is "safe."

Prohibited Actions

Employees must not

- (1) Use or be under the influence of alcohol within 4 hours before going on duty or operating, having physical control of, or being on duty to operate, a commercial motor vehicle or performing other DOT-covered safety-sensitive duties.
- (2) Report for duty or remain on duty requiring the performance of safety-sensitive functions with an alcohol concentration of 0.02 or greater, or report for duty within 24 hours after a DOT alcohol test result of 0.02 or greater, but less than 0.04. Individuals may need to abstain from drinking alcohol for a longer period than 4 hours prior to duty in order to be below 0.02.
- (3) Use any controlled substance unless specifically authorized by a physician and then only if the physician tells the individual that use of the controlled substance will not affect the performance of safety-sensitive functions.
- (4) Refuse to submit to a DOT or law enforcement post-accident alcohol or drug test, a DOT random, reasonable suspicion, or a DOT follow-up alcohol or drug test. Refusal includes refusing to be present at the testing location immediately on request by Nutley Board of Education, and refusal to comply with any testing procedures - including, but not limited to, refusal to provide specimens (breath or urine) unless medically incapable, refusal to provide identification or sign forms, refusal to provide necessary information, and refusal to submit to medical or other examinations as considered necessary by Nutley Board of Education, or its authorized agents. Refusal also consists of attempts to falsify or interfere with the testing process, including failure to comply with instructions or attempting to substitute or otherwise change specimens to be tested.
- (5) Use or possess alcohol for 4 hours before duty, while on duty, or 8 hours after an accident (unless alcohol testing has been performed after the accident).

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 4

NONPROFESSIONAL
STAFF

- (6) Perform safety-sensitive duties if aware of any medical condition or alcohol or drug use that may adversely affect the individual's ability to perform such duties.

Employees must:

- (1) Be aware that any violation of these regulations or Policy 424 (4219) subjects them to disciplinary action up to and including termination of employment.
- (2) Inform Nutley Board of Education of alcohol or drug use that may affect safety of employees or the public.
- (3) Submit to and pass a DOT alcohol and drug test prior to performing safety-sensitive job duties and after a violation of any DOT alcohol or drug rule.
- (4) Submit to evaluation and follow any recommended treatment plan by a substance abuse professional prior to performing safety-sensitive job duties after a violation of any DOT alcohol or drug rule (payment for such evaluation or treatment is not covered by Nutley Board of Education, except by any applicable and available health insurance) and submit to random follow-up DOT alcohol and/or drug testing for a minimum of 6 tests (alcohol, drugs, or both) within one year but more frequently and for up to 5 years as recommended by the substance abuse professional after a violation of any DOT alcohol or drug rule (such unannounced testing is in addition to any other applicable random alcohol or drug testing); authorize the release of any and all information related to evaluation, treatment, rehabilitation, testing, counseling, and/or group participation for alcohol or drug use by signing a consent form for such release.
- (5) Contact the Nutley Board of Education alcohol and drug testing program administrator, or other authorized Nutley Board of Education representative, immediately following any accident to make sure that required alcohol and drug testing procedures are followed; whether or not the individual is able to contact a Nutley Board of Education representative, the individual must make sure that he/she is tested with a DOT or law enforcement post-accident alcohol test as soon as possible (but always within 8 hours of the accident) and drug test (within 32 hours of the accident) after an accident in which a fatality occurs, significant damage occurs to property, physical injury, in which a traffic citation has been issued or in which the individual's possible contribution to the accident cannot be ruled out and in which a DOT regulation requires testing.

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 5

NONPROFESSIONAL
STAFF

Pre-Employment Testing Requirements

Prior to the first time an individual performs safety-sensitive functions for the Board, the individual must undergo testing for alcohol and controlled substances. No employee is allowed to perform safety-sensitive functions unless the employee has been administered a DOT alcohol test with a result indicating an alcohol concentration less than 0.04 and has received a drug test result from the MRO indicating a verified negative test result.

If a DOT pre-employment alcohol test result indicates an alcohol concentration of 0.02 or greater but less than 0.04, the individual must wait at least 24 hours before beginning safety-sensitive duties if the individual's safety-sensitive duties require a commercial driver's license (CDL).

Under FHWA rules, regardless of whether the Board performs DOT alcohol or drug tests on the applicant for employment, the Board must obtain, with the individual's consent, information on the individual's DOT alcohol tests with a concentration result of 0.04 or greater, positive DOT drug test results, and refusals to be tested, within the preceding two years, which are maintained by the individual's previous employers. This information must be obtained and reviewed by the Board no later than 14 calendar days after the first time an individual performs safety-sensitive functions for an employer, if it is not feasible to obtain the information prior to the individual's performing safety-sensitive functions. The Board may not permit an individual to perform safety-sensitive functions after 14 days without obtaining the information. The only exception to this rule is if the information has been requested from a previous employer who, in violation of DOT regulations, refuses to provide the information. In this case, a notation of such circumstances must be placed in the employee's file. If the employee stops performing safety-sensitive functions for the Board before expiration of the 14-day period or before the Board has obtained the required information, the Board must still obtain the information.

The Board must provide the individual's specific written authorization for release of this information to each of the individual's employers within the two preceding years. The Board may make this written authorization a condition of employment.

The release of any of this information may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality.

The Board will maintain a written, confidential record with respect to each past employer contacted.

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 6

NONPROFESSIONAL
STAFF

The Board is required by DOT regulation to release specific information related to DOT alcohol and/or drug testing requested by individuals to be released.

The Board may not base actions taken upon DOT authority for alcohol or drug test results related to tests not performed in compliance with DOT regulations; the Board may, however, take actions on the basis of any other applicable Board policies.

Nothing in DOT regulations prohibits non-FHWA employers from requesting this information, and nothing prohibits the Board from requesting information related to alcohol or drug misuse that was not related to a DOT alcohol or drug compliance program.

The Board may not use an individual to perform safety-sensitive functions if the Board obtains information that the individual has previously violated DOT alcohol or drug prohibitions unless the Board also obtains information indicating the individual has been evaluated by a substance abuse professional (SAP) as required by DOT, successfully completed any treatment program recommended by the SAP, and subsequently been tested with negative alcohol and/or drug test results according to recommended DOT requirements for return-to-work and follow-up testing.

The Board must conduct pre-employment drug testing of individuals each time an individual returns to work after layoff when the individual does not continue to be subject to random drug testing or has been employed by another entity unless the individual continues subject to random drug testing.

Implementation of Pre-Employment Screening

Every applicant for employment to a DOT-covered position must complete the Consent for Release of Alcohol and Drug Use and Testing Information Form. One copy of the form is sent to each employer that the individual indicates he or she worked for within the previous two years. If any employer indicates test results on alcohol tests with a concentration result of 0.04 or greater, positive drug test results, or refusals to be tested, or other violations of DOT alcohol or drug prohibitions, the Board will:

1. Immediately suspend the individual from performance of any DOT-covered duties if already employed.
2. Require the individual to demonstrate, by provision of information, that the individual has been evaluated by a substance abuse professional (SAP), successfully completed any treatment program recommended by the SAP, and passed return-to-work and follow-up alcohol and/or drug tests at the frequency and for the time recommended by the SAP.

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 7

NONPROFESSIONAL
STAFF

3. Consider any other action required or allowed by any Nutley Board of Education policy, regulation or procedure.

All records obtained in the individual's DOT file will be kept separate from personnel records. If an individual's previous employer does not provide requested information, further attempts to obtain the information will be made and documented.

Random Testing

Testing Rates: Random testing rates for both DOT alcohol and drug testing are given as percentages. A 50% rate means that 50 tests are conducted per 100 covered employees per year; a 25% rate means that 25 tests are conducted per 100 covered employees per year. Every time a random testing selection is made, each covered individual must have the same chance of being selected, regardless of how often individuals have been selected in the past. This means that, by chance, some individuals will be selected more than once in a given year (some as often as three or four times) and others may not be selected for several years.

Qualification: Inclusion in DOT random selection pools of any employees not subject to any of the DOT agency testing rules is prohibited.

Notification: The Board will ensure that DOT random alcohol and drug tests conducted are unannounced and that the dates for administering random alcohol and drug tests are spread reasonably throughout the calendar year.

The Transportation Coordinator will require that each individual selected for random alcohol and/or drug testing proceed to the testing site immediately. In the event the individual is performing a safety-sensitive function when notified, the Transportation Coordinator must ensure that the individual ceases the function, consistent with safety, and proceeds to the site as soon as possible.

Selection Method: The selection of individuals for random alcohol and drug testing must be made by a scientifically valid method. Under the selection process used, each individual must have an equal chance of being tested each time selections are made.

Timing of Random Testing

Alcohol: An individual may only be tested for alcohol while the individual is performing safety-sensitive functions, just before performing

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 8

NONPROFESSIONAL
STAFF

safety-sensitive functions, or just after ceasing the performance of such functions.

The best time to test for alcohol is before the individual begins to perform the safety-sensitive function. Detection at that point will prevent the individual from actually performing the function while he or she has alcohol in his or her system. However, if the individual understands that a random test will only be administered before he or she begins work and there is an opportunity to drink during work, the deterrent effect is limited. The ability to test just before, during, or just after performance increases the deterrent effect, and may enable detection of individuals who use alcohol on the job. The concept of "just before" and "just after" is intended to be close enough to the actual performance of the safety-sensitive function that the test results will clearly indicate if an individual has engaged in the mis-use of alcohol while performing or about to perform those functions.

Drug Testing: Controlled substances testing may be performed at any time while the individual is at work for the employer. The individual may be performing clerical or other non-safety sensitive duties at the time of notification by the employer.

Scheduling of the Test: The Board may not delay a test based upon a need to transport passengers. The Board should plan their notifications to reduce conflict with such demands affecting their random alcohol and drug testing programs. However, the Board is expected to notify individuals and conduct tests as soon as possible after a selection of individuals is made. This means that when the selection is made the Board must require all parties selected to submit to testing at their first available time.

Frequency: The Board must test at least once a year and establish a program that will ensure that there is no period of time during which employees know testing is "done for the year." For example, if the Board is required to conduct only two tests and that number of tests is completed by mid-summer, the Board's program must ensure that more tests could be conducted before the end of the calendar year. The Board could conduct random testing every quarter or could randomly select the month, within the next 12 months, for conducting the next test(s). Depending on the month selected, the Board may in fact test more than once in a calendar year.

The beginning minimum annual percentage rate for random DOT alcohol testing is 25%. Each year thereafter, each DOT agency will establish the annual percentage rate between 10% and 50%, depending upon the percentage of positive tests reported by its regulated industry in previous year(s). Each year the agency will publish in the Federal Register the minimum annual percentage rate for random alcohol testing. This new rate will be

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 9

NONPROFESSIONAL
STAFF

applicable starting January 1 of the calendar year following publication. The current minimum annual percentage rate for random DOT drug testing is 50% of the average number of DOT-covered positions.

Multiple Employers: If an individual works for two or more employers subject to DOT rules, the individual must be in all of the employer's random testing programs.

Absence of Selected Employee(s): When workers are off work due to long-term layoffs, illnesses, injuries or vacations, the Board has three options:

1. The employee's name could be skipped and the next person's name on the list selected for testing. If this occurs, the Board must document that the individual was ill, injured, laid off, or on vacation, and that he/she was in the random selection pool for that cycle.
2. The Board could remove the person's name from the selection pool for that cycle. If done for drug testing and the worker is out of the program for more than 30 days, DOT pre-employment testing provisions apply.
3. The Board could set the worker's name aside until he/she comes back from the extended leave, and then conduct the test at that time. The employer must not, however, notify any individual to submit to a test while that person is off work due to these extended leave periods.

Employer Documentation of Procedures: The Board must prepare and provide a complete and comprehensive description of the procedures used in its random DOT alcohol and drug testing programs. This information must be readily available for inspection and must include descriptions of: (1) how the random selection pool is assembled, (2) the method of selection and notification of individuals, (3) the location of collection sites, (4) methods of reporting the test results on each individual and, (5) summary reports of the entire program. The Board must document testing at the prescribed minimum annual percentage rate for alcohol and controlled substances.

Post-Accident Testing

As soon as practicable following an accident, as defined by the particular DOT agency governing the activities involved, the Board must test each individual performing safety-sensitive functions with respect to the activity.

Post-accident DOT alcohol tests must be performed as soon as possible, but always within eight hours following the accident.

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 10

NONPROFESSIONAL
STAFF

Post-accident DOT drug tests must be performed as soon as possible, but always within 32 hours following the accident.

If a post-accident alcohol or drug test is not promptly performed, the Board must prepare and maintain on file a record, to be submitted to the DOT upon request, stating:

- the reasons a post-accident alcohol test was not promptly administered if not performed within two hours following the accident.
- the reasons a post-accident alcohol test was not promptly administered if not performed within eight hours following the accident.
- the reasons a post-accident drug test was not promptly administered if not performed within 32 hours following the accident.

If a required post-accident alcohol test is not administered within eight hours, or a post-accident drug test within 32 hours, the Board ceases attempts to administer said test and completes the above documentation.

The results of a breath or blood test for the use of alcohol or a urine test for the use of drugs, conducted by federal, state, or local officials having independent authority for the test, may meet the requirements for post-accident testing providing the tests performed conform to applicable federal, state or local requirements and that the results of the tests are obtained by the employer. Such tests do not have to be conducted according to DOT procedures as long as applicable federal, state or local procedures were followed. The consequences of positive tests in these circumstances are the same as for any DOT alcohol or drug test.

There is no requirement or authorization to take specimens of any kind from an incapacitated individual unable to consent to testing except in special situations governed by specific DOT agency regulations.

The Board will provide individuals with necessary post-accident information, procedures and instructions prior to their performance of DOT-covered safety-sensitive duties so that they will be able to comply with post-accident testing requirements.

An individual who is subject to post-accident testing must remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. (Exception: the individual may assist in obtaining or providing necessary medical attention for injured people following an accident, and may leave the scene of an accident for the period of time necessary to obtain such assistance, or to obtain emergency medical care for him/herself.)

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 11

NONPROFESSIONAL
STAFF

Such a refusal is treated as if the individual had a verified positive drug test or had an alcohol test result of 0.04 or greater. The Board is responsible for judging whether the individual remained readily available and must record any failure to administer tests within the allotted time periods.

Reasonable Suspicion Testing

The Board must require an individual to submit to an alcohol or drug test when the Board's designee has reasonable suspicion that the individual has violated DOT alcohol or drug prohibitions.

In most cases, either an alcohol test or a drug test is indicated, but not both, since the suspicion is specific for either alcohol or drugs. The Board may, however, independently determine grounds for reasonable suspicion of both alcohol and drugs and perform both tests.

The Board's determination that reasonable suspicion exists to require the individual to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the individual. Alcohol testing is authorized by DOT only if the observations are made during, just preceding, or just after the period of the work day that the individual is required to be in compliance with DOT regulations.

Mere possession of alcohol, by itself, does not provide sufficient grounds for performing a DOT reasonable-suspicion test. Such tests must be based on the employee's appearance, behavior, speech, etc. However, possession of alcohol while performing safety-sensitive functions is, in and of itself, a violation of FHWA alcohol prohibitions for duties requiring a commercial driver's license (CDL).

The determination that reasonable suspicion exists to require the employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the individual. The observations for drug testing due to reasonable suspicion may include indications of the chronic and withdrawal effects of drugs.

If an alcohol test required on reasonable grounds is not administered within two hours following reasonable suspicion determination, the Board must maintain on file a record stating the reasons the test was not promptly administered. If an alcohol test required on reasonable suspicion grounds is not administered within eight hours following the determination, the Board must cease attempts to administer said test and must state in the record the reasons for not administering.

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 12

NONPROFESSIONAL
STAFF

The required observations for alcohol and/or drug reasonable suspicion testing must be made by a supervisory or company official who is trained in accordance with DOT requirements for supervisory personnel with required minimum training for alcohol or drugs, whichever is applicable.

Observations of third parties may be used as an indication of further observation or other investigation regarding whether reasonable suspicion testing should take place. Reasonable suspicion testing cannot be performed on the basis of third-party observations alone.

A supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test may not conduct the alcohol test on the individual.

A written record must be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor who made the observations, within 24 hours of the observed behavior or before the results of the drug test are released whichever is earlier.

Notwithstanding the absence of a reasonable suspicion alcohol test, no individual may report for duty or remain on duty requiring the performance of safety-sensitive functions while that person is under the influence of or impaired by alcohol, as demonstrated by the behavioral, speech and performance indicators of alcohol misuse. Nor may the Board permit the employee to perform or continue to perform safety-sensitive functions until an alcohol test is administered, and the employee's alcohol concentration measures less than 0.02.

Except as noted above, the Board cannot base any action taken against an employee based solely on that employee's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test except upon the independent authority of the employer. (This does not mean the Board cannot take any action, only that any actions taken other than those specifically authorized by the DOT must be taken based on independent Board policies or procedures.)

Documentation allows the Board to review reasonable suspicion determinations made by its officials. By comparing the observations recorded before both positive and negative test results, the Board may be able to evaluate patterns or procedures which are affecting the efficacy of reasonable suspicion testing, and make changes accordingly. In this way, documentation should also serve to reduce the potential for the use of reasonable suspicion testing as a means of harassment.

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 13

NONPROFESSIONAL
STAFF

Substance Abuse Professional Evaluation, Treatment, Return-to-Work and Follow-up Testing

Parties who violate DOT alcohol or drug rule prohibitions require evaluation by a substance abuse professional and may not return to DOT-covered safety-sensitive duties until:

- a substance abuse professional determines that the individual has successfully complied with any rehabilitation program prescribed following the initial evaluation.
- the individual undergoes a return-to-duty alcohol test with a result of less than 0.02 if the conduct involved alcohol, or a drug test with a verified negative result if the conduct involved a controlled substance.

However, nothing in this section of regulations shall prevent the Board from taking appropriate disciplinary action against an employee who has violated DOT alcohol and drug rule provisions and provisions related to Policy 424 (4219) and these regulations up to and including termination of employment. The Board is in no way obligated to allow any such employee to enter into a qualified rehabilitation program and reserves the absolute authority to terminate the individual's employment or initiate appropriate proceedings to do so.

After returning to DOT duties following such alcohol or drug rule violations, an individual must:

- be subject to a minimum of six (6) random, unannounced, follow-up alcohol and/or drug tests over the following twelve (12) months.

Upon the recommendation of the substance abuse professional, individuals with violations of DOT alcohol rules may also be tested for drugs and individuals with violations of DOT drug rules may also be tested for alcohol in both return-to-duty and follow-up testing.

The substance abuse professional may recommend testing for alcohol and/or drugs more frequently or for a longer time period than the required DOT minimums.

The substance abuse professional that performs the initial evaluation of the employee and also assures that recommended treatment requirements have been fulfilled prior to return to safety-sensitive duties should not be the actual treatment provider. Except in special cases noted below, the substance abuse professional should not be affiliated in any way with treatment providers.

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 14

NONPROFESSIONAL
STAFF

Note: Return-to-work and follow-up DOT alcohol testing may be conducted only when the individual is performing safety-sensitive functions, just before his/her performance of safety-sensitive functions, or just after ceasing the performance of such functions.

There is no requirement that the substance abuse professional make any specific recommendation to the Board, except for confirming that the individual has complied with any recommended rehabilitation. However, the Board is not prevented from requesting specific recommendations regarding return-to-work, follow-up evaluation or treatment, and/or follow-up testing. For example, a substance abuse professional may suggest that a party may return to work to safety-sensitive DOT duties, but only if he/she continues to participate in specific follow-up care, counseling or treatment. If this occurs, the Board should, based upon Nutley Board of Education policies (not DOT authority), make return to duty clearly dependent upon the employee's continued cooperation with such recommendations. The Board should also require follow-up information to assure that the employee is fulfilling these requirements, and should immediately remove from duty any individual who fails to continue to fulfill these requirements.

Evaluation and rehabilitation may be provided by the Board, by a substance abuse professional under contract with the Board, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs is made in accordance with Board/individual agreements and Board policies.

The Board must ensure that a substance abuse professional who makes the determination that an individual requires assistance does not refer that individual to a private practice, person or organization in which the substance abuse professional has any financial interest. The substance abuse professional is not prohibited from referring an individual for assistance provided through:

1. A public agency, such as a state, county or municipality
2. The employer or a person under contract to provide treatment for alcohol or controlled substance problems on behalf of the employer
3. The sole source of therapeutically appropriate treatment under the individual's health insurance program
4. The sole source of therapeutically appropriate treatment reasonably accessible to the individual.

BOARD OF EDUCATION
NUTLEY
DOT Alcohol and Drug Testing - pg 15

NONPROFESSIONAL
STAFF

DOT requirements must be met by the Board before returning individuals with such violations to DOT-covered safety-sensitive duties. However, the DOT does not require employers to provide or pay for rehabilitation or to hold a job open for an individual with or without salary.

Although DOT regulations do not provide for second opinions for substance abuse professional evaluations and recommendations, neither do they prohibit these. The Board may require a second opinion if the Board believes the substance abuse professional's recommendation to be inappropriate. The Board may also wish to consult its medical review officer (MRO), who should be qualified to provide advice or opinions on such matters (if the MRO was not the substance abuse professional who rendered the original opinion).

Qualifications of Substance Abuse Professionals

Substance abuse professional, as defined by the DOT, means a licensed physician (MD or DO), or a licensed 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.

Date Adopted: 12/19/95
Date Revised: