



**MONTGOMERY COUNTY,
TEXAS**

**SUBSTANCE ABUSE AND
ALCOHOL MISUSE POLICY
& FORMS**

December 8, 2008

MONTGOMERY COUNTY, TEXAS SUBSTANCE ABUSE AND ALCOHOL MISUSE POLICY

STATEMENT OF PURPOSE

Montgomery County is committed to maintaining the safety and health of its workers and will not tolerate any drug, alcohol, or intoxicant (i.e. inhalants, paint, gasoline, Freon, etc.) use which endangers the health and well-being of its employees, endangers the lives of the public on the highways, or threatens its operations.

It is Montgomery County's belief that the use of illegal drugs and the abuse of controlled substances, on or off the job, are not consistent with the law. When employees, on or off the job, use illegal drugs, abuse controlled substances, and/or alcohol (intoxicants), they endanger public safety and threaten the County's operations by tending to be less reliable, less productive, accident prone, and less likely to report to work regularly in a mental and physical condition fit for work. As a result, the County experiences increased liability, medical health costs, and workers' compensation costs. It also jeopardizes the reputation of the County and the quality of its services, and risks the well-being of involved employees, family members, co-workers, and the community.

Employees and the public have a basic right to have their workplaces and highways free of drugs and alcohol (intoxicants) and their effects, and to be able to rely on the fact that co-workers and drivers are not impaired by drugs and alcohol (intoxicants). In the interest of maintaining a safe workplace and highways that are free of drug and alcohol (intoxicants) abuse, Montgomery County is committed to strictly enforcing its policies relative to the use of drugs and alcohol. Said policies comply with the requirements of the Drug Free Workplace of 1988, Federal Motor Carrier Safety Regulations (FMCSR) and the Department of Transportation (DOT) 49 CFR Part 382, and 49CFR Part 40.

Montgomery County has designated the Human Resources Department, to answer questions regarding FMCSR 49 CFR, Part 382.

This regulation, Part 382, also requires Montgomery County to provide each employee with educational materials prior to the commencement of alcohol or drug testing. These materials must explain Montgomery County's policies and procedures with respect to the requirements of Part 382. The regulations require that Montgomery County give employees the educational material in writing.

The material found in this Employee Information for Substance Abuse and Alcohol Misuse manual meets all the requirements for training and distribution of education materials.

Upon completion, the Human Resources Department will give each employee the Receipt of Montgomery County Training form which requires a signature. This is for verification that the employee received the training and educational material required by regulations.

WHEN DOES FMCSR 49 CFR, PART 382 APPLY?

These regulations apply to all Montgomery County employees who are required to have a Commercial Drivers License as a condition of employment and/or perform a "safety-sensitive" function as described in 3.2 Drug Free Workplace of the Montgomery County, TX Employee Policy Manual.

For CDL employees, safety-sensitive means on-duty time. On-duty time is defined as “all time from the time an employee begins to work, or is required to be in readiness to work, until the time the employee is relieved from work.” This includes all time spent driving as well as all time spent inspecting the vehicle, loading or unloading, all time waiting to load or unload, or to leave on a trip, unless the driver has been specifically relieved of duty.

Simply stated, an employee is considered to be performing a safety-sensitive function during any period in which he is actually performing, ready to perform, or immediately available to perform a safety-sensitive function.

As it pertains to drinking any alcoholic beverages, the regulation also says that no employee may consume alcohol within four hours of going on duty. Therefore, the period for which an employee must be in compliance would be four hours prior to actually reporting for work and all time thereafter while on duty or available to be on duty.

If an employee violates any of the alcohol or drug prohibitions found under Subpart B or 49 CFR 382, the regulations require Montgomery County to take certain, specific actions.

Prohibited practices are as follows:

Part 382.201 - Alcohol Concentration

An employee who has a CDL will not report for duty or remain on duty in a safety-sensitive function while having a concentration of 0.04 or greater. However, a driver whose alcohol test indicates an alcohol concentration of 0.02 or greater but less than 0.04 must not perform or continue to perform any safety-sensitive functions for Montgomery County for a minimum of 24 hours.

Part 382.204 - Alcohol Possession

An employee will not be on duty or operate a commercial motor vehicle while possessing any alcohol.

Part 382.205 - On-Duty Use

An employee will not use alcohol while performing a safety-sensitive function.

Part 382.207 - Pre-Duty

An employee will not perform a safety-sensitive function within four hours after using alcohol.

Part 382.209 - Use following an Accident

Any employee required to take a post-accident alcohol test will not use alcohol for eight hours following the accident, or until the driver has taken the post-accident alcohol test, whichever occurs first.

Part 382.211 - Refusal to Submit to a Required Alcohol or Controlled Substance Test

An employee will not refuse to submit to any of the following alcohol or controlled substance tests:

- a) Post-Accident
- b) Random
- c) Reasonable Suspicion
- d) Follow-up Testing

Part 382.213 - Controlled Substance Use

An employee will not report to work or work in a safety-sensitive function if that employee uses any controlled substance. The only exception to this would be if a physician prescribes any medication containing a controlled substance and the physician advises the employee that the substance will not adversely affect his/her ability to operate a commercial motor vehicle or job performance. Montgomery County has the right to require employees to report the use of any therapeutic drug.

Part 382.215 - Controlled Substances Testing

An employee will not report for duty, remain on duty, or perform any safety-sensitive function if that employee tests positive for a controlled substance except as mentioned in 382.213, above.

WHAT DRUGS ARE COVERED UNDER 49 CFR, PART 382?

As stated in Part 382, screening will be done for the following drugs:

- * AMPHETAMINES
- * COCAINE
- * MARIJUANA
- * OPIATES
- * PHENCYCLIDINE (PCP)

FACTS ABOUT AMPHETAMINES

Amphetamines are central nervous system stimulants. They tend to make people “hyper” and “jumpy”. They are often used by drivers to stay awake and to counteract the effects of drowsiness. They are especially dangerous to take while driving.

Signs and Symptoms of Amphetamine use:

- | | | |
|--------------------|------------------|---------------------|
| * Hypersensitivity | * Grinding teeth | * Loss of appetite |
| * Exhaustion | * Numerous pills | * Dry Mouth |
| * Dilated pupils | * Sweating | * Excessive talking |

Effects on Driving:

- | | |
|---|--------------------------------|
| * More likely to take risks | * Delayed reaction time |
| * Impaired judgment | * Impaired muscle coordination |
| * Over-reaction when driving, such as:
excessive breaking, excessive acceleration, over-steering | |

FACTS ABOUT COCAINE

Cocaine also stimulates the central nervous system. It gives the user an intense feeling of well-being, or euphoria, known as a “high”. The “high” will last for 10 to 60 minutes. A more potent form of the drug, called crack cocaine, is especially addicting and dangerous. Although the “high” lasts only about 5 to 8 minutes, crack cocaine can be addicting after only one use and can cause death the first time it is used. Cocaine can be injected, snorted, or freebasing. “Snorting” is sniffing the drug up the nose, and “freebasing” is done by heating the drug and inhaling the vapors.

Signs and Symptoms of Cocaine Use:

- | | | |
|---|---|--|
| * Mood swings | * Depression | * Bad breath |
| * Weight loss | * Nose bleeds | * Euphoric feelings |
| * Restlessness;
difficulty sitting or standing
in one place | * Irritable, angry, nervous,
argues easily | * Runny nose, uncontrollable
sniffing |

Effects on Driving

- | | |
|---|---|
| * Slowed reaction time | * Slow to make decisions |
| * Slower response to traffic situations | * Unable to correctly measure time and distance |
| * Distorted vision and depth perception | |

FACTS ABOUT MARIJUANA

Marijuana is a depressant and mind-altering drug. Marijuana does not depress the central nervous system's reaction, it works on the brain. "Mind altering" means it causes hallucinations. It can be eaten or smoked. Street names for marijuana are "dope", "grass", "joint", "hash", or "hooch".

Drivers of commercial motor vehicles put themselves and others in danger when they use marijuana and drive. Tests have shown that a driver's reflexes and thought processes are slower under lasting influence of marijuana. The effects of this drug are longer lasting than first thought. In fact, impairment can last more than 24 hours after first using marijuana. The body actually stores the drug for days, weeks, and in some cases months, depending on the frequency of use.

Signs and Symptoms of Marijuana Use:

- | | | |
|--|---|--------------------------|
| * Dilated pupils | * Slowed reflexes | * Slowed thinking |
| * Giddiness | * Moodiness | * Trance-like state |
| * Impaired visual tracking | * Reduced Concentration | * Odor of burning rope |
| * Unable to sleep after prolonged
usage | * Often drives slower than
speed limit | * Short-term memory loss |

Signs to Look for:

- | | |
|-------------------------------------|---|
| * Cigarette rolling paper | * Hash pipe (very small pipe) |
| * Roach clip (device to hold joint) | * Dried plant material, either crumbled or pressed
together in a small, hard clump |

Effects on Driving

- | | |
|---|--|
| * Slowed reaction time | * Slow to make decisions |
| * Slower response to traffic situations | * Unable to correctly measure time and
distance |
| * Distorted vision and depth perception | |

Whenever marijuana is taken with alcohol, the effects of both are magnified many times over. It is very important that a driver knows that the effects of marijuana are unpredictable. The effects will vary depending on the quality of the drug, the tolerance of the user, and the dosage of amount taken. Be aware that the marijuana of today is up to 15 times stronger or more potent than the marijuana of the 1960's, and it sometimes contains fillers such as PCP, or other more dangerous chemicals.

FACTS ON OPIATES

Opiates are classified as a narcotic analgesic. They tend to have a sedating, calming effect and act as a depressant to the central nervous system. Opiates are more commonly known as morphine, codeine, and heroin. Street names for opiates are “junk”, ”smack”, “horse”, and “brown sugar”.

Opiates are prescribed by doctors to relieve pain, but they are used by the abuser to relax or “escape from the real world”. They can either be taken orally, injected, or smoked.

When the drug is injected, the user feels an immediate rush, usually followed by a very relaxed and soothing feeling. However, some opiates can cause very unpleasant side effects such as nervousness, nausea, and restlessness, and, if taken in excess, may cause coma or death.

Signs and Symptoms of Opiate Use:

- | | | |
|------------------------------|------------------------|---------------------------|
| * Mental Confusion | * Slurred Speech | * Unsteadiness |
| * Memory Loss | * Hostility | * Drowsiness |
| * Cold, Moist or Bluish Skin | * Short attention Span | * Reduced feeling to Pain |

Effects on Driving

- | | |
|--|--|
| * No concentration when driving (day dreaming) | * Distorted sense of time and distance |
| * Distorted vision | |

FACTS ON PHENCYCLIDINE (PCP)

Phencyclidine (PCP), commonly called “angel dust”, is known as a disassociate anesthetic. Users of PCP may experience hallucinations and signs of intoxication. They may not be able to focus their attention or will experience confusion and lack of coordination. Although PCP has immediate short term effects, it is also known for its long term effect of causing psychotic behavior often associated with violent acts. Other street names for PCP include “hog” and “crystal”. PCP may be smoked, snorted, or injected.

Signs and Symptoms of PCP Use:

- | | |
|-------------|----------------------------|
| * Delusions | * Increased Blood Pressure |
| * Confusion | * Anxiety |
| * Panic | * Flashbacks |

Effects on Driving:

- | | |
|-----------------------------------|-------------------------|
| * More likely to take risks | * Impaired coordination |
| * Aggressive actions with vehicle | |

OVER-THE-COUNTER AND PRESCRIPTION DRUGS

Just because it is legal to purchase non-prescription medicine over the counter doesn't mean it is legal or safe to use them while driving. DOT regulations do not permit drivers to take anything that can affect their ability to drive. For example, certain cold remedies contain antihistamines. Antihistamines may make the employee drowsy. If the warning on the box or label states, “Product may cause drowsiness: Do not operate heavy equipment or machinery while taking”, it is a violation of DOT regulations to take it and drive a commercial motor vehicle.

Over-the-counter stimulants such as “Be-Alert”, “No-Doz”, or “Stay Awake” are all considered legal and used by drivers to stay awake. However, these products only keep the driver’s eyes open. These stimulants cannot overcome the effects of fatigue on the body which impedes thought processes and reaction speed. In an emergency, the driver will not be able to perform to the same degree as they would with rest.

WHAT ABOUT PRESCRIPTION MEDICINE?

Is it acceptable to take prescription medicine as long as it has been prescribed by a doctor? Not if the prescription medication contains ingredients which may cause drowsiness. An employee should ask their physician to prescribe an alternate medication that will not affect their ability to drive or perform the duties of their job.

Montgomery County has the right to require employees to inform their supervisors of any medications being taken.

DRUG TESTING PROCEDURES

Montgomery County uses the DOTS’ procedures for all drug testing. The DOT prescribes the process known as urinalysis to be used to test for the five drugs. To maintain the accuracy and integrity of the tests, and to protect the rights of the employee, a very strict procedure must be followed as outlined below:

Specimen Collection:

1. When it is an employee’s turn to report for a drug test, they will be sent to a collection site, usually a clinic or doctor’s office, hospital, etc, which has been approved for the collection of urine samples for testing. The site must have the authorized personnel, equipment and facilities to properly obtain the samples and forward them to a National Institute on Drug Abuse (NIDA) certified laboratory. The collection site must have adequate security to prevent the specimen from being tampered with in any way. Only the employee and the authorized collection person will be permitted to handle the specimen. It will be done in such a way as to assure that the specimen has not been adulterated or contaminated in any way, and that the specimen is, in fact, the employee’s.
2. Upon arrival at the testing site, the collection site person must make a positive identification of the employee. This can be done with a photo ID., or if the employer has sent a company representative with the employee, the representative can provide identification or verification. If the person to be tested cannot be positively identified, the procedures will stop at that point, and no specimens will be taken.
3. Once proper identification has been established, the employee will be asked to take off any unnecessary clothing such as a coat or jacket. This is done so that the employee cannot conceal or hide anything which may be used to contaminate or adulterate the specimen. It is also done to prevent anyone from bringing urine donated by someone else. Some collection sites have policies that require the person to be tested to remove all clothing and put on a hospital type gown. In either case, they may keep their wallet or purse, and may also have the right to request a receipt for items removed.
4. The employee will be requested to wash and dry their hands. This is done to remove any substances which may be on the hands or under the fingernails which may be used to contaminate the specimen. Once this has been done, they will be required to remain in the presence of the site person, and will not be permitted to go near anything which could be used to contaminate the specimen.

5. Next, the person to be tested will be given a specimen bottle and asked to provide a specimen. They will be permitted to go into the rest room or stall alone to provide the specimen. Once inside, they may see that the water in the toilet has been dyed blue or another color and that there is no access to a workable faucet.
6. If the employee cannot provide the specimen, the collection site person understands and will be happy to provide water or coffee in an unlimited supply.
7. Once the sample has been provided, it is given to the appropriate site person. The employee must remain in view of the specimen at all times until it has been sealed in the proper shipping container.
8. The site personnel perform several tests on the sample to make sure it is, in fact, from the person being tested and that it has not been contaminated. First the specimen will be looked at to detect any impurities or discolorations. Then the specimen will be checked to determine if it is the proper temperature. The temperature must be read within four minutes from the time it leaves the body. The temperature range must be between 90.5 degrees Fahrenheit and 99.8 degrees Fahrenheit. If it is not within this range, that is reason to believe that the specimen has either been altered or substituted. In other words, the employee will be suspected of either sneaking in someone else's urine, or watering the specimen down, or altering it in some way.
9. Assuming that the temperature is within the proper range, and the sample looks as it should, a tamper proof seal will be placed over the top of the bottle and down both sides. Written on the seal will be the employee's name, identifying number, date, and any other information required by Montgomery County. The employee will be asked to sign or initial the seal guaranteeing that its content is the sample provided. The sample will then be placed in an envelope. The site collection person will fill out and sign the drug testing custody form, certifying that the sample was obtained in accordance with the federal requirements. The employee will be asked to read and sign a statement certifying that the sample enclosed is theirs. The site collection person will complete the Chain of Custody Form and Control Form. The forms will be sealed in an envelope, then the specimen and envelope will be sealed in a shipping container and sent to a NIDA-approved lab for testing.
10. If a site collection person receives a specimen that does not appear to be the right color or the temperature is not in the proper range, the employee will be asked to provide another specimen. This time a person of the same sex will accompany him/her into the bathroom, and watch the sample being provided. After that, the same procedures for testing, sealing, and initializing will be provided and both this sample and the one suspected of being tampered with will be sent to the NIDA-approved lab for testing.

Testing Process:

Assuming that the specimen was not tampered with, the chain of the Custody and Control forms were completed correctly, and the shipping container arrived at the designated lab unopened, the specimen will then be processed.

1. Once the sample is received at the NIDA-approved lab, the lab begins their own internal Chain of Custody Form to assure the specimen is not tampered with. The shipping container will be opened, and a lab technician will inspect the Chain of Custody Form, Control Form, and the seal on the bottle, looking for any discrepancies. If any discrepancies are noted, the lab has the right to request that a new sample be obtained.

2. Assuming no discrepancies are noted, the lab will inspect the sample for contamination or alteration. This inspection will be conducted by looking at the sample and testing the sample for specific gravity. If the specific gravity is not within certain tolerances, or if any other discrepancies are noted with the sample, the lab has the right, and obligation, to require that another sample be obtained.
3. There is no way that an employee can alter the urine to avoid detection. The alteration will be detected, and new samples must be provided under direct observation. This system cannot be beat. For an employee to try simply makes matters worse.
4. Assuming the urine sample has been determined to have been collected properly and no alterations or contaminants are suspected, the sample will undergo an initial screen test. This test is called the EMIT Test or EMIT Assay. If any of the five drugs being tested for are present in the urine, a chemical reaction will occur. The amount of the drug(s) in the urine determines the strength of the chemical reaction. Certain cutoff levels for the EMIT Assay Test of the selected five tested drugs have been established by the DOT. A nanogram is the measure of unit used for this test.
5. If the initial Emit Assay Test shows that one or more of the drugs are present at a certain level, it is required that a second, extremely accurate, test be conducted on the sample. The test is called the GAS CHROMATOGRAPHY/MASS SPECTROMETRY (GC/MS).
6. This test is believed to be the most sensitive and accurate drug test available. Each drug has its own fingerprint. The GC/MS basically looks for the fingerprint, identifies it, and determines the level of that drug in the urine. The scientific community agrees that if an initial EMOT Test is positive and then confirmed by the GC/MS, this is evidence of drug use. Scientists state that this combination of tests is 99.9% accurate and will be upheld in a court of law.
7. **Can the lab be wrong, make an error, or can their equipment malfunction?** The answer is "Yes", an error may occur. What protection do you have to guarantee that you will not be falsely accused of drug abuse because of some type of mistake by the lab?
8. First, the lab to which your urine sample will be sent must be approved by the National Institute on Drug Abuse (NIDA). The approval procedures are stringent. In order to receive this approval the lab must prove that they adhere to the highest standards of quality control. In order for approval to be granted, the lab must also agree to have blind samples sent to them for testing. A large number of blind samples are routinely sent to each NIDA-approved lab. The blind samples are sent to the lab by the government and companies. The lab management also routinely sends through its own blind sample. The laboratory technicians conducting the test have no way of knowing which of the samples are blind and which belong to an actual employee. If the technician conducting the testing misses a blind sample or incorrectly reports a wrong drug or amount, that lab risks losing its NIDA certification. Obviously, since there are so few NIDA-approved labs, losing the certification could cost the lab millions of dollars in revenue. If for no other reason, labs work very hard to maintain the highest quality control standards available. Also, if a lab is suspected of finding false positives, it could be required to retest every positive result it has reported. Labs are required to keep positive urine samples in refrigerated storage for a specified amount of time in order to be able to retest if necessary. Imagine what that would cost a lab for reporting a large number of positive test results.
9. Assuming the GC/MS test proves that the level of drugs in the urine meets the requirements for a verified positive test, the results of the drug test will be reported to Montgomery County's Medical Review Officer (MRO) as a verified positive.

Medical Review Officer (MRO)

Under these regulations, each organization must have on staff or contract, the services of a Medical Review Officer. The MRO is a medical doctor who has received extensive training on drugs and drug abuse. The lab must send the results of positive tests to the MRO with an average of five working days once the results are determined. The actual test results are never sent to Montgomery County.

It is the responsibility of the MRO to make the final determination of a positive result. If the report received indicates a positive drug test for one or more of the drugs tested, the MRO will examine possible alternatives which may have resulted in this positive finding. The MRO has the authority to check medical records and interview an employee in order to determine if a positive report has a justifiable reason. (For example, perhaps the employee was taking a prescribed medication under a doctor's order, such as cough syrup which contains codeine. This would obviously show up as a positive.) After talking to the employee or reviewing his/her medical records, it is possible that the test results will be reported as negative to Montgomery County.

If your test is positive and there are no mitigating circumstances, the MRO will attempt to talk to you directly. If the MRO is unable to get in contact with you within a reasonable amount of time (usually 24 hours), the MRO will contact Montgomery County and request that Montgomery County tell you to contact the MRO. The MRO will NOT tell Montgomery County why he wants to talk to you. Montgomery County must contact you and request that you contact the MRO within 24 hours. Then Montgomery County must contact the MRO and inform that MRO that you have been notified to contact the MRO.

If you fail to contact the MRO within the prescribed time, the MRO has no choice but to notify Montgomery County that your test result was verified positive. Obviously, it is to your benefit to talk with the MRO if it is requested.

HOW ALCOHOL IS COVERED UNDER FMCS 49 CFR, Part 382

When consumed in moderation for enjoyment, alcohol is classified as a recreational beverage. When alcohol is consumed in quantity and causes physical or mood altering effects, it becomes a substance of abuse.

Effects on Driving

As can be seen, signs and symptoms of alcohol use and misuse are very similar to other prohibited drugs.

The effects of alcohol vary depending on many factors. The first and most obvious factor is the quantity of alcohol consumed. Other factors include a person's body weight, whether he is rested or tired, sick or healthy, his stomach content, age, the altitude, and his gender.

When discussing the effects of alcohol, the term "impairment" is used. Research has shown that women will become more impaired than men of the same size and body weight and from the same quantity of alcohol because they metabolize alcohol differently than men. As a general rule, a large person will be less impaired than a smaller person drinking the same quantity of alcohol. An individual who is sick or tired will become impaired quicker than one who is rested and healthy. And drinking at higher altitudes will cause greater impairment than drinking at lower altitudes. For example, there is a difference between having a drink in Denver, Colorado with an altitude of 5,280 feet above sea level, and Key West, Florida with an altitude of 2 feet above sea level.

Any impairment observed will be dependent upon all of these factors. Tests have shown that a driver's reaction time increases as much as 60% after just two drinks. One thing is certain: The degree of impairment and the effects of alcohol on a person's body changes significantly as more alcohol is consumed.

As a rule, consuming one or two drinks tends to relax an individual and create a feeling of well being. Beyond one or two drinks, however, alcohol begins to react differently on individuals, depending on the factors previously discussed, which determine the rate of metabolism in the body.

ALCOHOL TESTING PROCEDURES

The DOT regulations require that a process called breath analysis is performed to determine if alcohol is present in the body and, if so, in what concentration. The procedures for alcohol testing are not nearly as comprehensive as those for controlled substances. This is true because the alcohol testing can be performed at various county locations by a trained employee. Alcohol testing, unlike controlled substances testing, does not involve complicated and expensive chemical tests and technicians to perform them.

The alcohol testing also does not involve an MRO, since the results of the test are obtained immediately from a computerized instrument known as a breathalyzer. This is the same instrument used by law enforcement agencies throughout the United States. They have been determined to be extremely reliable and accurate and are accepted by the courts as prima facie evidence in DUI and DWI proceedings.

As stated, the alcohol tests can be conducted at various county locations by a representative of the county. That representative can be a designated county employee or a person under contract to Montgomery County. These regulations do require that the person administering the test must be trained, through hands-on training, on how to administer the test and interpret the results. Not only will the person administering the test have had thorough training, but that person must also have taken a written test on the administration and interpretation of the alcohol breath testing procedures.

1. To take an alcohol breath test, the employee will simply be required to blow into a tube connected to the breathalyzer. The breath sample travels through the breathalyzer and will be analyzed by its computer. Within minutes, the computer will analyze the breath sample and provide the operator with a read out as to what alcohol concentration, if any, is in the sample.
2. If the breathalyzer indicates a blood alcohol concentration of 0.02 or higher, the employee will be asked to take a second breathalyzer test. The first test is called a screening test. The second test is referred to as a confirmation test. A confirmation test, in most circumstances, will only be administered if the screening test indicates a blood alcohol concentration of 0.02 or higher.
3. If the confirmation test confirms a blood alcohol concentration of 0.02 or higher but less than 0.04, the regulations require that the employee will not be permitted to perform any safety-sensitive function for at least 24 hours.
4. If the confirmation test confirms a blood alcohol concentration level of 0.04 or higher, the regulations require that the employee be referred to a substance abuse professional for evaluation.

TYPES OF TESTS

The regulations require drug and/or alcohol testing for the following six different circumstances:

Pre-employment Testing
Post-Accident Testing
Random Testing
Reasonable Suspicion Testing
Return-to-Duty Testing
Follow-up Testing

Part 382.301 Pre-Employment Testing

All Montgomery County employees are required to submit to a post-offer pre-employment drug test and must have received a negative result prior to reporting to work. The supervisor making the offer of employment must request the pre-employment drug test from the Human Resources Director, who will make arrangements for the required tests. Human Resources will administer the random, reasonable suspicion, return to duty & and follow-up testing. Risk Management will administer post accident testing.

Part 382.303 - Post Accident Testing

Any accident involving a vehicle, equipment or worker related injury is subject to drug testing. If a driver is involved in an accident while operating a commercial motor vehicle (CMV) and the accident results in:

1. Loss of human life,
2. A citation to the driver for a moving traffic violation,
3. Injury to the employee, other person or property

A controlled substance test must be performed on the surviving driver within 32 hours.

If alcohol misuse is suspected, drivers must take a breath test within 2 hours.

If, at the time of the accident, federal, state, or local officials perform a drug test on an employee, the requirement for drug testing has been met, provided the employer obtains the results of the test. If the federal, state, or local officials do not test an employee, it becomes the responsibility of your employer to have the test administered.

Montgomery County must provide training to assure that employees are familiar with the requirements, procedures, and instructions for post-accident drug testing. This training must be performed prior to allowing an employee to operate a CMV. Drivers must be informed that except for receiving medical attention for themselves, or for other injured persons, and for leaving the scene to notify appropriate authorities, they must make themselves available for post-accident drug testing. Failure of an employee to be available for post-accident drug testing will be deemed as a "refusal to submit" and will carry with it the appropriate penalties.

Part 382-305 - Random Testing

Montgomery County must randomly select drivers to be tested throughout the year for drug and alcohol use. By the end of the calendar year, at least 50% of the drivers must have been tested for drugs and at least 25%

of the drivers must have been tested for alcohol. At each selection time all drivers must have an equal chance of being selected. All Montgomery County employees listed in 3.2-7 of the Montgomery County Personnel Manual are required to have random tests for drugs at a rate of 50% per year.

The selection process must be a scientifically valid method such as a computer-based random number generator which uses a unique identifier for each employee. The unique identifier could be the employee's social security number, employee number, or any other comparable identifying number. If an employee is selected for random testing, it is entirely possible that he/she could be chosen again during the year. Once tested, the employee's name is not removed, but goes back into the general list.

The selection times MUST be unannounced and MUST be reasonably spaced throughout the year. Since random drug testing is a major deterrent to substance abuse use, the DOT is very concerned that the random selection of drivers and dates tested be spread throughout the year. Even though the required number of drivers has been tested by July, for example, the DOT may require that more random tests be performed throughout the remainder of the year because the deterrent effect of the random testing program would have been reduced if there was no more testing.

Drivers who have been chosen for a random test must proceed immediately to the test site. The only exception is the driver on duty, performing a safety-sensitive function. The employer must ensure that this driver cease performing the safety-sensitive function and proceed to the test site as soon as possible.

Part 382.307 - Reasonable Suspicion Testing

Montgomery County must require an employee to submit to a controlled substances test if Montgomery County has "reasonable suspicion" to believe that the employee has violated the prohibitions of Subpart B concerning controlled substances. The supervisor has the right and responsibility to require drug testing upon their observations of the employee's suspicious behavior, appearance, speech, or body odors. All Montgomery County employees are subject to reasonable suspicion drug and/or alcohol testing.

The supervisor charged with the responsibility of determining reasonable suspicion must have 60 minutes of training on controlled substance use and 60 minutes of training on alcohol misuse. The training must cover the physical, behavioral, speech and performance indications of probable use of controlled substance.

If a supervisor has not gone through the 120 minutes of training he/she cannot be given the responsibility of determining whether reasonable suspicion exists to require an employee to take a controlled substance test.

Only one supervisor is needed to make a reasonable suspicion determination. However, even though the regulations only require that one trained supervisor is needed to make a reasonable suspicion determination, whenever possible, two trained supervisors should observe the employee and concur that reasonable suspicion does indeed exist and that the employee should be required to take a controlled substances test. For alcohol testing, the supervisor who determines reasonable suspicion cannot be the one to administer the breath test.

It is critically important that all reasonable suspicion be thoroughly documented. Part 382.307(f) requires that a written record of the observations leading to a controlled substances test be created by the supervisor(s) making the observations. It must be made within 24 hours of the observed behavior or before the results of the test are released to Montgomery County. The supervisor must make a request to the Human Resources Department for the reasonable suspicion controlled substances test. The Human Resources Department will then make arrangements for the required test.

Part 382.309 Return to Duty Testing

Part 382.311 Follow-up Testing

When it has been determined that an employee has participated in prohibited conduct as outlined in Subpart B, the driver must be removed from any safety-sensitive functions and be referred to a substance abuse professional in accordance with the provisions of Part 382.605 on referral, evaluation, and treatment.

Once the driver has met the provisions of Part 382.605 he may return to duty and perform safety-sensitive functions, but he will be required to undergo follow-up testing.

The follow-up testing must consist of at least six tests in the first 12 months following the driver's return to duty. If the substance abuse professional (SAP) determines that follow-up testing for both alcohol and controlled substances should be conducted, follow-up tests will be conducted for both. This is true even though the employee may have violated only the regulation pertaining to substance abuse prohibition.

After six tests during the one year period, the substance abuse professional may make the determination that there is no need for more follow-up tests. However, the substance abuse professional can require that follow-up testing continue for a period of up to five years.

REFUSAL TO SUBMIT TO TESTING

If an employee refuses to submit to a required drug or alcohol test, they will not be permitted to perform or continue to perform any safety-sensitive functions until they have complied with Part 382.605 of the regulations that refers to referral, evaluation and treatment.

What constitutes a Refusal?

Obviously, if an employee says "no" and refuses to take a required test, that would be a refusal.

Under the regulations, if an employee fails to provide adequate breath for testing without a valid medical explanation, that would constitute a refusal.

In the event of a controlled substances test, if the employee fails to provide adequate urine for testing, without a valid medical explanation, this would also constitute a refusal.

If an employee engages in conduct that clearly obstructs the testing process that would be considered a refusal.

If the employee fails to be available for testing after being involved in an accident where a fatality occurred or was issued a citation that would be considered a refusal.

If the employee refuses to take a required test, the employer is required to make a referral to a substance abuse professional. The SAP will evaluate the employee and determine if treatment is necessary. If treatment is required, the employee must successfully complete the prescribed treatment and undergo a return-to-duty test before being allowed to return to work. The substance abuse professional can also determine that the return-to-duty test can be for both alcohol and drugs, regardless of why the employee was originally referred. If the return-to-duty test is for controlled substances, a negative test result must be verified. If it is for alcohol, the employee's breath concentration must be less than 0.02.

An employee's admission to the use of a controlled substance and/or being under the influence of alcohol will be considered the same as a positive result.

PENALTIES & CONSEQUENCES

The consequences for employees who engage in prohibited substance abuse or alcohol misuse practices are outlined in Subpart E of Part 382 and in 49CFR of Part 383 of the Commercial Driver's Licensing Standard and Section 3.2-10 of the Montgomery County Personnel Policy Manual. There are severe consequences for drivers who violate the rules and for Montgomery County who employs them.

For drivers, violation of these rules may mean loss of income, loss of job, loss of license, referral to a substance abuse professional and subsequent counseling, and civil as well as criminal penalties, including incarceration.

Subpart E states that an employee found to have engaged in prohibited conduct as outlined in Subpart B shall not perform a safety-sensitive function until he has complied with the regulations found in Subpart F which require referral, evaluation, and/or treatment for substance abuse, and has undergone return to duty testing and is participating in follow-up testing as recommended by the SAP.

For Montgomery County, violations of Part 382 can result in major fines from the DOT, the levy of an unsatisfactory rating from the DOT, possible loss of insurance, and the possibility of major liability in the event of a lawsuit involving an accident where a driver under the influence of a controlled substance was involved.

Subpart E and the Montgomery County Personnel Policy Manual state that Montgomery County shall not permit any employee to perform safety-sensitive functions if the employee has violated the prohibitions found in Subpart B until the driver has satisfied the provisions of referral, evaluation and/or treatment, and has received a negative return-to-duty test.

OTHER PENALTIES & CONSEQUENCES

If an employee is found to be operating a commercial motor vehicle under the influence of a controlled substance as determined by a court of law, the driver is also subject to the penalty provisions outlined in 49 CFR Part 383.51, the Commercial Drivers License Standards.

These rules state that while operating a commercial motor vehicle, any driver who refuses to take a controlled substances test or has a verified positive test result will, upon conviction of a first offense, lose his/her license for a period of one year. A second conviction will result in a lifetime loss of license. (If hauling hazardous material, the loss of license for the first offense will be for three years, and a second conviction will result in a lifetime loss of the driver's commercial driver's license).

Please be aware that under this section, Montgomery County is not prohibited from taking punitive action which is consistent with law or County policy. This could include termination of employment. In addition to these penalties, the driver is also subject to any penalties, fines, or jail time imposed by local or state jurisdictions.

REFERRAL, EVALUATION & TREATMENT

This regulation is very specific regarding the actions of Montgomery County in the event a driver has a verified positive controlled substance test. It is also very specific in regards to the required actions for a driver who has had an alcohol breath test indicating an alcohol concentration of 0.04 or more.

As opposed to simply levying penalties against the driver, the regulation requires the driver to be referred to a substance abuse professional to help determine if the driver needs to undergo counseling for a substance abuse problem.

If an employee has a verified positive controlled substances test:

1. Montgomery County must provide a list of resources available indicating where an employee can receive an evaluation and help to resolve any problems associated with substance abuse. This list must include the names, addresses and telephone numbers of substance abuse professionals and counseling treatment programs.
2. The employee must be evaluated by a substance abuse professional who shall determine what assistance, if any, are needed to help resolve any problems associated with substance abuse.
3. Before returning to duty, the employee must undergo a return-to-duty controlled substances test that returns a verified negative result or an alcohol test indicating less than 0.02 alcohol concentrations.

If the initial evaluation by the substance abuse professional indicated a need for assistance in resolving substance abuse problems, the employee must be re-evaluated by a SAP to ensure that any rehabilitation program prescribed has been properly followed.

Once back to work in a safety-sensitive function, the employee will be required to take a minimum of six follow-up tests during the first 12 months following return to duty. If indicated by the SAP the follow-up testing may be continued for up to 60 months.

NOTE: Even though an employee may have only violated the prohibitions regarding controlled substance use, the substance abuse professional may require both alcohol and controlled substance testing, if determined up on evaluation that a problem may have existed with alcohol and controlled substances for the return-to-duty test, as well as the follow-up tests.

The substance abuse professional may terminate the requirements for follow-up testing anytime after the first six tests have been administered.

The evaluation and rehabilitation may be provided under the Montgomery County Employee Benefit Plan or by a substance abuse professional not affiliated with the plan. In either case the cost of the program is the employee's responsibility.

It is Montgomery County's responsibility to ensure that the substance abuse professional who recommends treatment for a driver does not refer him to the former private program or to a program to which the substance abuse professional will receive remuneration.

These requirements for referral, evaluation, and rehabilitation do not apply to applicants who refuse to submit to pre-employment drug and alcohol testing or who have a pre-employment drug or alcohol test with a verified positive result.

STEPS TO FOLLOW AFTER RECEIVING A POSITIVE TEST FOR A CONTROLLED SUBSTANCE

If an employee receives a positive result on a random, post-accident, or reasonable suspicion drug screen or has a blood alcohol level of 0.04 or greater and the department head chooses not to terminate his employment, the following steps must be taken: Contact Human Resources for assistance.

1. The employee must call the P.P.O provider under the County medical program at (800) 749-2714, ext. 1500 and explain that he/she has received a positive result on a drug alcohol screen, and that as a result he needs to be referred to a Substance Abuse Professional (SAP) under the Montgomery County Employee Benefit Plan.
2. The employee must then call Pinnacle Employee Testing Service at (281) 405-8378 and speak to the Medical Review Officer (MRO) under contract. He/she should then give the MRO the name and phone number of the SAP to whom he was referred.
3. The employee must be evaluated by the SAP to determine the extent of treatment needed. The cost of all treatment and testing is the responsibility of the employee. The employee must complete all treatment ordered.
4. The SAP will keep the MRO advised of the employee's progress.
5. Once the employee has completed the treatment prescribed by the SAP and is declared rehabilitated, he must contact Pinnacle and arrange for his drug and/or alcohol testing prior to return to duty. Until this point, the employee cannot perform the duties of a safety sensitive position.
6. During the next year, Pinnacle will call the employee's supervisor a minimum of six times and either come to the work site to test the employee, or request the employee come to their facility for the test. During this time the employee will also be placed in the random pool.
7. The employee may be subject to unannounced testing for the next 60 months in addition to possible selection through the random pool.
8. Anyone who receives a positive drug screen or breath alcohol level greater than .02 and whose employment is not terminated, will be relieved from duty for 3 days without pay on the first occurrence.

MONTGOMERY COUNTY REASONABLE SUSPICION SUPERVISOR TRAINING

I. INTRODUCTION

THE OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991 REQUIRES EMPLOYERS TO TEST DRIVERS WHO ARE REQUIRED TO OBTAIN COMMERCIAL DRIVER'S LICENSES (CDL) FOR THE ILLEGAL USE OF ALCOHOL AND CONTROLLED SUBSTANCES.

THE MONTGOMERY COUNTY DRUG FREE WORK PLACE POLICY states that **EACH** employee is required to submit to a controlled substance test if the department head or supervisor has "reasonable suspicion" to believe that the employee has violated this policy.

The policy states that no employee shall report for duty or remain on duty if he/she uses any controlled substances, **EXCEPT** when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to conduct his/her duties in a safe manner.

Montgomery County requires that an employee inform his supervisor or department head of any therapeutic drug use.

THE DEPARTMENT HEAD/SUPERVISOR WHO IS CHARGED WITH THE RESPONSIBILITY OF DETERMINING REASONABLE SUSPICION MUST HAVE RECEIVED AT LEAST 60 MINUTES OF TRAINING ON ALCOHOL MISUSE AND 60 MINUTES OF TRAINING ON CONTROLLED SUBSTANCES USE. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substance.

II. VIDEO D.O.T. DRUG AND ALCOHOL TESTING - PINNACLE - 30 MINUTES

IT IS IMPORTANT FOR YOU AS A SUPERVISOR TO understand the testing procedure. You are the direct contact with the employee and the one he/she will be directing questions to.

This video actually shows the testing procedure.

Having actual knowledge that an employee has used a controlled substance; the department head/supervisor shall not permit the employee to perform or continue to perform a function that could cause injury to himself or his fellow workers.

III. DVD - SUPERVISORS TRAINING DEALING WITH DRUG AND ALCOHOL ABUSE- 18 MINUTES

The supervisor or Department Head who observes suspicious behavior in an employee based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee, has the right and responsibility to require that employee to be tested for drug use.

Only one supervisor is needed to make a reasonable suspicion determination. However, whenever possible, two (2) trained supervisors should observe the employee and concur that reasonable suspicion does indeed exist and that the employee should be required to take a controlled substance test. You may have grounds for "reasonable suspicion" that an employee is under the influence of a controlled substance. While you may make this determination yourself, it is suggested that you have your suspicion confirmed by another supervisor. This will eliminate the possibility of being accused of being bias.

It is critically important that all reasonable suspicion be thoroughly documented. Montgomery County requires that a written record of the observations leading to a controlled substance test shall be created by the supervisor(s) making the observations. This written record must be made within 24 hours of the observed behavior or before the results of the test are released to Montgomery County.

IV. VIDEO – SUPERVISORS REASONABLE SUSPICION TRAINING - 34 MINUTES

Again, enough emphasis cannot be placed on the fact that any confrontation must be conducted privately and with priority given to the rights of the employee. The supervisors must treat the employees with respect, and in all cases, must avoid getting into an argument.

TESTING RESULTS ARE KEPT IN THE HUMAN RESOURCES OR THE RISK MANAGEMENT OFFICE IF THE TEST WAS RELATED TO AN ON-THE JOB ACCIDENT. THESE RESULTS ARE NOT PUBLIC RECORD AND ARE NOT PART OF THE EMPLOYEE'S PERSONNEL RECORD. Test results are available only to the department head. However, they are not sent to the department.

Any access to records is extremely limited. They may only be obtained under the following situations:

1. An employee is entitled, upon written request, to obtain copies of any record of his/her misuse of alcohol, including copies of any test results.
2. Montgomery County shall permit access and make copies to these records available to the Secretary of Transportation, any DOT agency, or any State or local official who has regulatory access over the County or employee.
3. In the event of a post-accident alcohol test, said test result shall be made available to the National Transportation Safety Board if that agency is investigating the accident and so requests the results.
4. If the Employee initiates or has initiated on his behalf a lawsuit, grievance or other proceeding (including, but not limited to worker's compensation unemployment compensation, or other proceedings relating to a benefit sought by the driver), Montgomery County may release the results of the alcohol test to the decision-makers in the action provided the action arose from the result of the alcohol test.
5. Montgomery County shall release information regarding an employee's record to any person if so directed by the specific, written consent of the employee authorizing release of the information.

V. HANDOUTS

VI. QUIZ (GIVEN ON COMPLETION OF COURSE)



SUPERVISORS OBSERVATION AND REQUEST FOR REASONABLE SUSPICION TESTING

THIS FORM MUST BE COMPLETED BY THE SUPERVISOR OR COUNTY OFFICIAL MAKING THE REASONABLE SUSPICION DETERMINATION THAT AN ALCOHOL OR DRUG TEST IS INDICATED. FOR REASONABLE SUSPICION DRUG TESTS, THE FORM MUST BE COMPLETED WITHIN 24 HOURS OF THE DETERMINATION OR PRIOR TO RECEIPT OF DRUG TEST RESULTS, WHICHEVER IS EARLIER.

EMPLOYEE NAME: _____ DEPARTMENT: _____

DATE OF OBSERVATION: _____ month, day, year

START OF OBSERVATION: _____ AM _____ PM END OF OBSERVATION: _____ AM _____ PM

SPECIFY THE NATURE OF THE WORK-RELATED INCIDENT WHICH CAUSED REASONABLE SUSPICION:

- ABSENCE FROM WORK SITE ACCIDENT POLICE REPORT UNSAFE ACTIONS
 FIGHT OR CONFLICT LOSS OF WORK ABILITY DISCOVERY OF DRUG PARAPHERNALIA
 OTHER (List Below)
-
-

OBSERVED BEHAVIOR: (Check all that apply)

WALKING/STANDING

- FALLING
 STAGGERING
 STEADY
 STUMBLING
 OTHER

SPEECH

- APPARENTLY NORMAL
 INCOHERENT
 SHOUTING
 SILENT
 SLURRED
 RAMBLING
 OTHER _____

EYES

- APPARENTLY NORMAL
 BLOODSHOT (RED)
 GLASSY
 CONSTRICTED PUPILS
 SMALL
 DILATED PUPILS
 OTHER _____

SMELL

- SMELL OF ALCOHOL OR DRUGS ON THE PERSON'S BREATH OR OF ALCOHOL IN A BEVERAGE
 SMELL OF ALCHOL OR DRUGS ON THE PERSON'S BODY

ACCIDENT

- TRAFFIC ACCIDENT – GIVE CIRCUMSTANCES SURROUNDING EVENT
 OTHER ACCIDENT – GIVE CIRCUMSTANCES SURROUNDING EVENT

FULLY DESCRIBE BELOW THE EVENT(S):

- A) LEADING UP TO THE INCIDENTS OR SITUATION.
- B) THE WORK-RELATED INCIDENT/SITUATION ITSELF, AND
- C) THE RESULTS OF THE INCIDENT/SITUATION

ONLY INDICATE THINGS OBSERVED, NOT PERSONAL THOUGHTS OR WHAT IS SUSPECTED. INCLUDE RELATED ACTIONS, NOT PERSONAL, OFF DUTY ACTIONS. BE SPECIFIC. FILL OUT SPACES BELOW AND ATTACH ADDITIONAL SHEETS IF NECESSARY. USE DATES, TIMES, PLACES AND NAMES.

SUPERVISOR – DESCRIBE INTERACTIONS WITH THE EMPLOYEE (QUESTIONS, ANSWERS, INSTRUCTIONS, ETC.):

PHYSICAL EVIDENCE (PILLS, BOTTLES, BROKEN EQUIPMENT, ETC.) LIST ITEMS, GIVE LOCATIONS, AND DISPOSITION. BE SPECIFIC:

ADD ANY ADDITIONAL INFORMATION:

TESTING

IF UNABLE TO TEST WITHIN **2 HOURS** OF REASONABLE SUSPICION DETERMINATION, STATE REASONS:

IF UNABLE TO TEST WITHIN **8 HOURS** OF REASONABLE SUSPICION DETERMINATION, CEASE ATTEMPTS TO TEST AND STATE REASONS:

SIGNATURE OF REPORTING SUPERVISOR / DEPARTMENT

DATE

SIGNATURE OF WITNESSING SUPERVISOR / DEPARTMENT

DATE

SIGNATURE OF DEPARTMENT HEAD / DEPARTMENT

DATE

MONTGOMERY COUNTY SUPERVISOR TRAINING - REASONABLE SUSPICION Q & A FOR SUBSTANCE ABUSE AND ALCOHOL MISUSE

Below are some questions which may arise before or during a confrontation. The answers are suggested replies to some of the questions you may receive.

- Q. Why have a county anti-drug policy, what's the objective, and aren't you infringing on my private life?**
- A.** The purpose of the County Drug Testing Program is to provide a drug-free workplace and to provide for the safety of all employees and the public in whom you will be in contact. The intent of the drug testing program is not to control the private lives of our employees, but to make sure that they are drug free and safe to work when they report to work.
- Q. Why am I being singled out for a test?**
- A.** You have been observed by one or more trained supervisors who believe that your actions and behavior appeared suspicious. For your safety and safety of those who work with you, you are being asked to submit to a reasonable suspicion controlled substance test.
- Q. What if I refuse to take the test?**
- A.** According to the Montgomery County Drug Policy regarding controlled substance testing, a refusal will mean the same as a positive test and you are subject to termination of employment.
- Q. Where will the test be conducted?**
- A.** Arrangements have been made by the personnel office, at a local collection site, supervised by trained medical people. The samples obtained will be sent to a laboratory certified by the Substance Abuse and Mental Health Services Administration, Health and Human Services (S.A.M.H.S.A., H.S.S.).
- Q. Is someone going to watch me give the urine sample?**
- A.** You will be permitted to give the urine sample in private; however, if it is suspected that you have tampered with the sample, you may be required to give a second sample, at which time a person of the same sex will accompany you.
- Q. Will everyone know that I have taken a drug test?**
- A.** Only if you tell them. Management will respect your right to privacy and will not inform your co-workers. The results of the test will be sent to a qualified physician known as a Medical Review Officer (M.R.O.) who will review the results of the test and discuss it with you directly. The M.R.O. will inform the county whether the test is positive or negative, and if positive, for which drug it was positive after he/she has talked with you.

Q. What if I'm taking a prescription drug, will it show up?

A. If the M.R.O. has any questions about the medication you are taking, you will be contacted directly.

Q. Can I go back to work after taking the test?

A. You will not be permitted to work until a negative result is obtained. (Depending on County policy, however, since referral to drug testing is based on observation of suspicious behavior and a reasonable belief that the driver was impaired by drugs or alcohol, Montgomery County feels that it is unwise to allow an employee to continue to work until the results of the test are obtained.)

Q. If I am referred to a substance abuse professional, who will pay for it?

A. Alcoholism and other drug addictions are recognized as diseases responsive to proper treatment. For that reason, the county offers treatment under the Montgomery County Employee Benefit Plan. (See the Plan Document for details.) New employees in their 90-day probationary/waiting period are not eligible for any benefits under the Montgomery County Employee Benefit Plan and would have to seek treatment at their own expense.