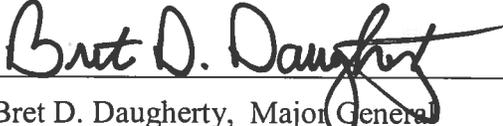




Department Policy No. HR-201-08

Title:	Ensuring a Drug and Alcohol Free Workplace
Applies To:	Washington Military Department State Employees
Authorizing Source:	WAC 296-800-11025; 357, 37, 200 Federal Drug-Free Workplace Act of 1988 Federal Commercial Vehicle Act of 1986 RCW 69.50 & 46.25 Executive Order 92-01 Title 49 CFR Part 40, 382, 383 Applicable Collective Bargaining Agreements
Information Contact:	Human Resources Director Building # 33 (253) 512-7941
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Approved By:	 Bret D. Daugherty, Major General The Adjutant General Washington Military Department Director

Purpose

The Department's goal is to ensure the health and safety of all Washington Military Department (WMD) state staff and the general public, as well as to promote an efficient and productive work environment.

Scope

This policy applies to all state employees of the WMD. This policy does not apply to federal personnel to include Active Guard and Reserves (AGRs) and traditional guardsmen in a federal military status or military technicians.

Policy

1. WMD is committed to a drug and alcohol free workplace.

2. WMD requires drug and alcohol testing under certain circumstances:
 - A. All Washington Youth Academy staff who have regularly scheduled unsupervised access to or regular interactions with Washington Youth Academy Cadets are subject to pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up testing. (See Appendix for definitions.)
 - B. Employees required to have a Commercial Driver's License (CDL) as part of the essential functions of their position are subject to pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing in accordance with the U.S. Department of Transportation Rules and Federal Omnibus Transportation Employee Testing Act of 1991.
 - C. Employees who perform safety-sensitive functions are subject to pre-employment, post accident, post-firearm shooting incidents, and reasonable suspicion testing. Safety-sensitive positions include those where an employee is issued a firearm, operates motorized equipment or vehicles used for State business or handles hazardous substances, dispenses medications or transports clients or students.

The following applies to all WMD state employees:

1. All employees must report to work in a condition fit to perform their assignments unimpaired by alcohol or drugs.
 - A. Employees may not use or possess alcohol while on duty, including standby status, in state vehicles or on WMD premises or other government or private worksites where employees are assigned to conduct official state business.
 - B. The unlawful use, possession, delivery, dispensation, distribution, manufacture or sale of drugs in state vehicles, on WMD premises, or on official business is prohibited.
2. Employees shall notify appointing authority of any controlled substance conviction.

Any employee convicted of any controlled substance statute violation must notify his/her Assistant Director or Director within 48 hours of the conviction.
3. Managers, supervisors, and lead workers must attend training to recognize drug and alcohol abuse.
4. WMD Human Resources Office provides Information to all employees on a drug and alcohol free workplace program.

5. WMD employees who violate this policy may be subject to disciplinary action up to and including dismissal from employment.
6. WMD encourages employees to voluntarily seek treatment for drug and alcohol abuse.

Employees who voluntarily seek assistance will be removed from safety-sensitive functions or other duties that may pose a hazard to the employee or others. They must complete recommended treatment, including aftercare, and provide documentation verifying completion of the treatment prior to resuming those duties

Below are additional requirements specific to the Washington Youth Academy (WYA) employees and/or applicants who, based on essential job functions, must operate a commercial motor vehicle (CMV) which requires holding a commercial driver's license (CDL) as defined by the Commercial Motor Vehicle Safety Act of 1986.

1. WYA CMV drivers who must have a CDL will attend training regarding drug and alcohol abuse prior to performing safety-sensitive duties and prior to drug and alcohol testing. Applicants to WYA positions, which identify a CDL requirement, are subject to pre-employment testing and/or providing drug test results from a previous employer.

CDL Drivers will be tested for controlled substances unless the applicant participated in a DOT testing program within the past 30 days and:

- a. Passed a DOT controlled substance test within the past six (6) months; or
 - b. Was subject to DOT random controlled substance testing program for the previous 12 months; and
 - c. Has not violated any prohibitions of 49 CFR Part 382 within the past six (6) months.
2. All Supervisors of CDL Drivers must attend training regarding drug and alcohol testing rules and regulations in compliance with federal regulations.
 3. All CDL Drivers will receive an initial copy of this policy and annual reminders thereafter. Each driver will be provided with the required written information as specified in the regulations.
 4. Employees must notify their supervisor of certain medications.

Employees must remove themselves from performance of any safety-sensitive function and report the situation to their supervisor if they are experiencing any

impairment from prescription or non-prescription medication or if there is the potential for any impairment.

5. WMD employees required to hold CDLs are prohibited from the following:
 - a. No driver shall report for or remain on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.02 or greater.
 - b. No driver shall engage in the use of alcohol while performing safety sensitive functions
 - c. No driver shall perform safety sensitive functions within four (4) hours after using alcohol.
 - d. No driver required to take a post-accident alcohol test under the regulations shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
 - e. No driver shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up controlled substance and/or alcohol test required by the regulations.
 - f. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

***Prescription Medications:* No driver may possess any prescription medication or report to work while using any prescription, except when he/she is under a doctor's care and the doctor has advised the driver that the substance does not affect his/her ability to operate a commercial motor vehicle. The use of medication that could affect a driver's safe job performance is prohibited while working. The driver shall report the use of any prescribed medication and, without identifying the medication, shall provide a certificate from the driver's doctor that the use of the medication will not impair his/her ability to safely perform his/her duties. If, as a result of testing under this policy, the driver is found to have the presence of controlled substances in the body which is a result of the use of his/her legally prescribed medication that has not been reported, the driver shall be removed from any safety sensitive duties until it is determined that the use of medication will not impair his/her ability to safely perform assigned duties. The driver shall also be subject to disciplinary action, up to and including dismissal from employment.

*** Agency requirement, not a DOT mandated requirement*

6. WMD employees required to hold CDLs who violate this policy may be subject to disciplinary action up to and including dismissal from employment.

Drivers found in violation of this policy shall:

- a. Not be permitted to perform or continue to perform safety-sensitive functions or other duties which may pose a hazard to the driver or others and;
- b. Be subject to appropriate disciplinary action and Federal mandates set forth in the Federal Omnibus Transportation Employee Test Act of 1991.

7. WMD Maintains Confidentiality and Privacy.

Confidentiality and privacy will be maintained throughout all stages of the testing process including the reporting of test results. All alcohol and controlled substance testing shall be done in accordance with procedures set forth by the US Department of Transportation and approved by the U.S. Department of Health and Human Services (DHHS).

All records involving drug and alcohol testing information will be maintained in secure locations with controlled access in accordance with Federal regulations.

8. Employees subject to drug testing who refuse to comply with a request for an alcohol or controlled substance test are in violation of this policy.

Refusing to comply with a request for testing of alcohol or controlled substances will be documented as a refusal and treated as a positive test result for controlled substance and/or an alcohol test result at the level of 0.04 breath alcohol concentration.

Refusing to comply includes providing false information in connection with a test, attempting to falsify test results through tampering, contamination, adulteration, or substitution. Refusal to comply may include an inability to provide a specimen or breath sample without a valid medical reason or failure to proceed immediately to the collection site designated by WMD (See Appendix for definitions).

9. WMD employees subject to testing under this policy who have a positive alcohol and/or a positive controlled substance test may be subject to disciplinary action, up to and including dismissal, based on the incident that prompted the testing, including a violation of the drug and alcohol free work place policy.

10. WMD pays for alcohol and/or initial controlled substance testing.

11. WMD employees subject to drug testing under this policy may request split sample testing.

If an employee's initial controlled substance test is positive, the employee may request the split sample be tested at WMD's expense. If the test result is positive, WMD will charge the employee for the cost of the split sample testing.

12. WMD employees are considered on duty while traveling to and from and participating in drug and alcohol testing.

APPENDIX:

DEFINITIONS

For the purpose of Policy HR-201-08 – Ensuring a Drug and Alcohol Free Workplace and the accompanying procedures the following definitions apply:

Accident:

For CDL Drivers – An occurrence involving a commercial motor vehicle as defined by the regulations operating on a public road that results in; 1) a fatality; 2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident and the driver receives a citation under state or local law; or 3) one or more motor vehicles incurring disabling damages as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle and the driver receives a citation under state or local law.

For All drivers - An occurrence involving a state owned motor vehicle operating on a public road that results in; 1) a fatality; 2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident and the driver receives a citation under state or local law; or 3) one or more motor vehicles incurring disabling damages as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle and the driver receives a citation under state or local law.

An accident may be considered objective grounds, allowing a reasonable suspicion test.

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

Alcohol Concentration (or content): The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an Evidential Breath Test (EBT).

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

Breath Alcohol Technician (BAT): An individual who has undergone training equivalent to the National Highway Traffic Safety Administration's (NHTSA) model course. The BAT instructs and assists individuals in the alcohol testing process and operates an EBT approved by the NHTSA.

Commercial Driver's License (CDL), Commercial Motor Vehicle: A license required by the Commercial Motor Vehicle Safety Act of 1986 in order to operate a motor vehicle

or combination of motor vehicles which: 1) has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or 2) has a gross vehicle weight rating of 26,001 or more pounds; or 3) is designed to transport 16 or more passengers, including the driver; or 4) is used in the transport of hazardous materials requiring placards.

Confirmation Test: For alcohol testing: a confirmation test means a second test, following a screen test of 0.02 or greater, which provides quantitative data of alcohol concentration. For controlled substance testing: a confirmation test means a second analytical procedure on the primary sample to identify the presence of a specific drug or metabolite. The confirmation test is independent of the screen test and uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

Contractor: The firm retained by WMD to collect/transport/test samples collected, determine random testing, provide medical review officer services, report results to WMD, etc.

Controlled Substances or Drugs (see RCW 69.50): Amphetamines, barbiturates, cocaine, marijuana, methaqualone, opiates, phencyclidine (PCP) inhalants, hallucinogens, prescription drugs, and any other substance, legal or illegal, that impairs or tends to impair an employee's physical or mental ability to perform his or her duties in a safe and competent manner.

For CDL Drivers, the following controlled substances are tested for under the U.S. DOT Federal Omnibus Transportation Employee Testing Act of 1991 regulations and this policy: 1) Marijuana, 2) Opiates, 3) Cocaine, 4) Amphetamines, and 5) Phencyclidine (PCP).

All employees subject to this policy are tested for: 1) Marijuana, 2) Opiates, 3) Cocaine, 4) Amphetamines, and 5) Phencyclidine (PCP).

Dilute Specimen: A specimen with creatinine and specific gravity values which are lower than expected for human urine.

Driver: Any permanent, seasonal career, probationary, temporary or intermittent employee performing duties which requires possession of a current driver's license to operate a motor vehicle. For the purpose of pre-employment/pre-duty testing, the term Driver includes all prospective persons applying for positions with duties which require a valid driver's license.

Evidential Breath Testing Device (EBT): A breathalyzer device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath for the use of alcohol containing substances.

Drug: Any controlled substances, prescription or over the counter medications.

Follow-up Test: Unannounced alcohol and/or controlled substance test conducted in accordance with the recommendations of the Substance Abuse Professional and requirements in the Return-to-Work Agreement. This test is conducted only after an employee has violated this policy. All employees subject to this policy are tested for: 1) Marijuana, 2) Opiates, 3) Cocaine, 4) Amphetamines, and 5) Phencyclidine (PCP). This test may also include an Evidential Breath Test (EBT).

Impaired: Observable and documented deterioration in work-related performance due to the use of alcohol, any type of controlled substance or non-prescription drugs.

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

Objective Grounds: Examples may include but are not be limited to:

1. Physical symptoms consistent with controlled substance and/or alcohol use;
2. Evidence or observation of controlled substance or alcohol use, possession, sale, or delivery; or
3. The occurrence of an accident(s) where a trained manager, supervisor or lead worker suspects controlled substance/alcohol use may have been a factor; or
4. Indications of the chronic use and withdrawal effects of controlled substances.

Observed Collection: Under normal circumstances the employee will be afforded complete privacy in the restroom for providing a urine sample. Certain situations do require the urine sample to be provided under same gender direct observation. When that occurs, the donor will be required to follow the observer's instructions, raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process.

Pre-Employment Test: A controlled substance test required prior to performance of safety-sensitive functions. This requirement also applies to current WMD employees who haven't previously performed safety-sensitive functions or those returning to safety-sensitive duties after a long absence. All employees subject to this policy are tested for: 1) Marijuana, 2) Opiates, 3) Cocaine, 4) Amphetamines, and 5) Phencyclidine (PCP).

Reasonable Suspicion: For drivers – the belief that a driver has violated alcohol or controlled substance prohibitions and this policy, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. All employees subject to this policy are tested for: 1) Marijuana, 2)

Opiates, 3) Cocaine, 4) Amphetamines, and 5) Phencyclidine (PCP). In addition, employees may be given an Evidential Breath Test (EBT)

For all other employees covered under this policy – A reason to suspect that alcohol or controlled substance usage may be adversely affecting the employee's job performance or that the employee may present a danger to the physical safety of the employee or others. Specific objective grounds must be stated in writing that support the reasonable suspicion. All employees subject to this policy are tested for: 1) Marijuana, 2) Opiates, 3) Cocaine, 4) Amphetamines, and 5) Phencyclidine (PCP). In addition, employees may be given an Evidential Breath Test (EBT)

Refusal to submit/comply (to an alcohol or controlled substance test):

1. Fails to show up for any test within a reasonable time after being directed to do so by the Employer or to remain at the testing site until the testing process is complete. This includes the failure of an employee to appear for a test when called by a Consortium/Third Party Administrator;
2. Fails to provide a urine specimen for any drug test required by 49 CFR Part 382;
3. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen;
4. Fails to provide a sufficient amount of urine when directed, unless it has been determined, through a required medical evaluation, that there was an adequate medical explanation for the failure to provide.
5. Fails or declines to take a second test the employer has directed following a negative dilute result;
6. Fails to undergo an additional medical examination, as directed by the MRO as part of the verification process, or as directed by the Designated Employer Representative (DER) concerning the evaluation as part of the "shy bladder" procedures in 49 CFR Part 40, subpart I;
7. Fails to cooperate (e.g. refuses to empty pockets when directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector) or otherwise interferes with any part of the testing process.
8. Fails to sign the certification at Step 2 of the alcohol testing form (ATF).
9. Is reported by the MRO as having a verified adulterated or substituted test result.
10. For an observed collection, fails to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the

observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process.

11. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
12. Admit to the collector or MRO that you adulterated or substituted the specimen.

Return to Duty Test: An alcohol and/or controlled substance test required after an employee violates this policy. Conducted upon the recommendation of the Substance Abuse Professional in accordance with the Return-to-Work Agreement prior to an employee returning to safety-sensitive duties.

Safety-sensitive Employees: Any employee who performs or may be subject to a call to perform safety-sensitive functions as defined. Also, any employee who is required to possess a CDL as part of his or her employment or who performs duties for WMD utilizing a CDL.

Safety-sensitive Functions/Duties: For drivers includes all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety sensitive functions shall include:

- (1) All time at an employer facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment as required by 49 CFR 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR 393.76);
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

- (7) Any employee who is issued a firearm, works with minors, operates motorized equipment or vehicles for state business or handles hazardous substances.

Screening Test (initial test): In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate “negative” urine specimens from further consideration.

Split Sample or Split Specimen: In drug testing, it means a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that split sample be tested following a verified positive test of the primary specimen or a verified adulterated or substitute test result.

Substance Abuse Professional (SAP): A licensed physician (Doctor of Medicine or Osteopathy); a licensed or certified social worker; a licensed or certified psychologist; a licensed or certified employee assistance professional; or a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC); or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC); or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC) who is knowledgeable about and has clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders and who qualifies under 49 CFR Part 40, subpart O.

Under the Influence: Under the influence means that an employee is exhibiting behavior and/or has a physical appearance and/or odor leading supervisory staff to believe that the employee is impaired due to the use of alcohol, any controlled substance, or non-prescription drugs.

Washington Youth Academy Staff – Any WMD state employee, who by the nature of their employment with the Youth Academy have regularly scheduled or unscheduled access to and interaction with cadets in an educational, residential, office, or community setting.