

Oregon School Boards Association Selected Sample Policy

Code: GBEDA-AR
Adopted: ✓

Drug and Alcohol Testing - Transportation Personnel *

(This administrative regulation is required if the district operates their own transportation services, or any district staff that is required to have a commercial driver's license (CDL).)

The following procedures shall govern the district's drug use and alcohol misuse prevention program:

1. Program Coordinator

The ^{Dir. of Bus. Services} ~~superintendent~~ will be designated as the district's drug use and alcohol misuse prevention program coordinator. The ~~superintendent~~ will coordinate the district's responsibilities and compliance efforts with the applicable provisions of the Omnibus Transportation Employee Testing Act of 1991 (OTETA). The ~~superintendent~~ will:

- a. Ensure that all covered employees receive written materials explaining the district's drug use and alcohol misuse prevention program requirements including:
 - (1) The district policy and administrative regulations;
 - (2) A contact person knowledgeable about the materials, policy, administrative regulations and the OTETA;
 - (3) Categories of employees covered;
 - (4) Information about the safety-sensitive functions and what period of the workday the employee is required to be in compliance. Safety-sensitive functions shall include such responsibilities as all on-duty time waiting to be dispatched, driving time, assisting or supervising loading or unloading, repairing, obtaining assistance or remaining in attendance upon a disabled vehicle. All time spent providing drug and alcohol samples, including travel time to and from the collection or testing site as needed to comply with random, reasonable suspicion, postaccident, return-to-duty or follow-up testing, will also be considered as on-duty time;
 - (5) Specific information concerning prohibited conduct;
 - (6) Circumstances under which employees will be tested;
 - (7) Procedures used in the testing process;
 - (8) The requirement that covered employees submit to drug and alcohol testing, administered in accordance with 49 C.F.R. Part 382;
 - (9) Explanation of what constitutes a refusal to submit to a drug and/or alcohol test;
 - (10) Consequences of violations (e.g., discipline up to and including dismissal as may be required by the district and removal from safety-sensitive functions as required by the OTETA) and notification of resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and the use of drugs including the names, addresses and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs. Such information will include the consequences for covered employees found to have a breath alcohol concentration rate of 0.02 or greater, but less than 0.04, and for those employees found to have a breath alcohol content level greater than 0.04. Minimally, no driver tested and found to have a breath alcohol concentration rate of 0.02 or greater but less than 0.04 shall be permitted to perform or continue to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test;

SAP =
Substance
Abuse
Professional

- (11) Information on the effects of drug use and alcohol misuse on an individual's health, work and personal life; signs and symptoms of an alcohol or drug problem (driver's or coworker's); and available methods of intervening when such problems are suspected, including confrontation, referral to an employee assistance program as available and/or referral to the administration.
- b. Ensure that employees sign statements certifying that they have received the materials;
 - c. Ensure that ~~[administrators]~~ ~~[supervisors]~~ or their designee, designated to determine reasonable suspicion, receive at least 60 minutes of drug abuse training and an additional 60 minutes of alcohol misuse training. Training will include the physical, behavioral, speech and performance indicators of probable drug use and alcohol misuse;
 - d. Ensure district compliance with applicable provisions of the OTETA's requirements regarding the district's management information system, retention and confidentiality of records;
 - e. Ensure selection of a site with appropriately trained personnel for the collection of specimens for drug testing;
 - f. Ensure selection of a site with a certified breath alcohol technician and evidential breath testing devices for alcohol testing;
 - g. Ensure selection of a laboratory certified by the Department of Health and Human Services (DHHS) to conduct drug specimen analysis;
 - h. Ensure selection of a qualified medical or osteopathic doctor to serve as a medical review officer (MRO) to verify laboratory drug test results;
 - i. Ensure selection of qualified personnel to provide education and training to employees and supervisors in accordance with employee assistance program requirements as specified in the OTETA;
 - j. Ensure the district's drug use and alcohol misuse prevention program is maintained in at least outline form, on file and available for inspection at the district office. The district shall maintain the following:
 - (1) Information on the effects and consequences of drug and alcohol use on personal health, safety and the work environment;
 - (2) Information on the manifestations and behavioral changes that may indicate drug and alcohol use or abuse;
 - (3) Documentation that drug training for all supervisory personnel has consisted of at least 60 minutes;
 - (4) Documentation that alcohol training for all supervisory personnel has consisted of at least 60 minutes;
 - (5) Documentation of training given to employees.
 - k. Ensure the establishment of clearly defined communication procedures to include the method (e.g., mail, facsimile) and frequency (e.g., monthly, daily, weekly) as well as the authorized individuals to impart and receive information to meet the documentation and confidentiality requirements of the OTETA;
 - l. Ensure employee organizations receive written notice of the availability of all pertinent drug use and alcohol misuse prevention program information;
 - m. [Ensure compliance with stand-down prohibitions as set forth by the OTETA. "Stand-down" means the practice of temporarily removing an employee from the performance of safety-sensitive functions, based on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test or a substituted test, before the MRO has completed verification of the test results. The district will not stand-down employees, except as provided by the Federal Motor Carrier Safety Administration (FMCSA) below:

- (1) The district may seek a waiver of the prohibition against standing down an employee;
- (2) Requests which include all required information will be submitted to FMCSA for approval.]

2. Pre-employment Testing

The district shall conduct pre-employment testing as follows:

- *
add
"alcohol"
to
every
phrase
- a. All offers of employment for positions as identified by Board policy and as required by the OTETA will be contingent upon drug [and alcohol] test results;
 - b. Individuals offered employment with the district and employees transferring to positions subject to the OTETA contingent on drug [and alcohol] testing, must provide written consent for the release of any prior employer positive drug and failed alcohol testing results, refusals to be tested, other violations of testing regulations and, with respect to any employee who violated drug and alcohol regulations, documentation of the employee's successful completion of return-to-duty requirements (including SAP evaluations and follow-up tests) within the preceding two years;
 - c. The district shall obtain and review such drug and alcohol information from previous employers of the past two years ~~[no later than 14 calendar days after]~~ [before] the driver is used for the first time. The district will provide the driver's written permission for release of information to the previous employers;
 - d. Release of such information may be by telephone, letters or any other method that ensures confidentiality. The district will maintain a written, confidential record of each past employer contacted;
 - e. The district will not use a driver with a positive drug test or a failed alcohol test while employed with a previous employer or who refused to test while under employment with a previous employer unless the driver is in compliance with the SAP's treatment program and the OTETA's return-to-duty test requirements;
 - f. Prior to being directed by the district to a collection site for drug [and alcohol] testing, the applicant will be notified that the urine sample collected shall be tested for the presence of drugs [and the breath or saliva sample shall be tested for the presence of alcohol];
 - g. Failure to report to the collection site for testing within the time frame specified by the district shall constitute a refusal to report for testing and result in immediate withdrawal of the employment or transfer offer;
 - h. Pre-employment drug [and alcohol] testing will be paid for by the [district] ~~[employee]~~;
 - i. Tests must indicate negative drug test results ~~and a breath alcohol content level below a 0.02~~. Individuals who fail to meet such drug [and alcohol] requirements [will] ~~[may]~~ not be hired or transferred voluntarily or involuntarily to covered positions;
 - j. Such testing will also be required of covered employees each time an employee returns to work after a layoff period if the employee was removed from the random testing pool. As long as the employee remains in the random testing pool, additional testing or subsequent pre-employment drug [and alcohol] testing will not be necessary following a layoff;
 - k. The district will notify individuals offered employment with the district contingent on drug testing of the results of such testing upon request within 60 days of being notified of the disposition of the employment application;
 - l. Refusal to submit to drug [and alcohol] testing and/or to provide signed permission for the release of past testing information as required by the district shall result in immediate termination from employment or transfer consideration;
 - m. ~~The individual may request a screening of the split specimen at his/her own expense. All such requests must be received in writing by the district no later than 72 hours following notification to the applicant of the positive test results.~~

3. Post-accident Testing

The district shall conduct post-accident testing as follows:

- a. It is the responsibility of the employee to report for post-accident drug and alcohol testing as soon as practicable following a motor vehicle accident which occurs while the employee is performing district safety-sensitive functions in which there is a fatality or the employee receives a citation for a moving traffic violation in connection with an injury or tow-away accident:
 - (1) The employee will report to the designated collection site for post-accident drug and alcohol testing as soon as practicable following the occurrence of the accident;
 - (2) If alcohol testing has not been administered within two hours, the district will prepare and maintain on file a record stating the reasons the test was not promptly administered;
 - (3) If alcohol testing is not administered within eight hours, the district will cease attempts to administer an alcohol test and will prepare and maintain on file a record specifying why the test was not administered;
 - (4) If drug testing has not been administered within 32 hours following the accident, the district will cease attempts to administer such tests and will document why the test was not administered;
 - (5) The employee will contact the ^{DIA OF BUS. SERVICES.} ~~[district drug use and alcohol misuse prevention program coordinator] [district official]~~ or designee as soon as practicable following the accident giving as much detailed information about the accident as possible (e.g., fatalities, injuries, tow-aways, traffic citation issued, etc.).
- b. The district will provide employees with necessary post-accident testing information, procedures and instructions as a part of its employee training program. Additionally, written instructions to follow in the event of an accident will be provided in district vehicles as appropriate. Instructions will include locations of drug specimen collection and alcohol testing sites and telephone number of the district drug use and alcohol misuse prevention program coordinator or other district officials to contact;
- c. The employee shall remain readily available for testing or may be deemed by the district to have refused to submit to testing. Such refusal is treated as if the district received an alcohol test result of 0.04 or greater or received a positive drug test. Nothing in this requirement shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care;
- d. Results of a breath or blood test for the use of alcohol or a urine test for the use of drugs conducted by on-site federal, state and/or local law enforcement officials having independent authority for the test shall be considered to meet necessary requirements provided results of the test are obtained by the district and the tests conform to all applicable federal, state and/or local requirements;
- e. An employee who is involved in an accident involving a fatality, injury and/or tow-away as described by the OTETA is prohibited from using alcohol for eight hours after the accident or until the employee undergoes a postaccident alcohol test, whichever occurs first.

4. Random Testing

The district shall conduct random drug and alcohol testing annually as follows:

- a. Not less than ~~50~~²⁵ percent of the average number of driver positions shall be tested for drugs and not less than 10 percent shall be tested for alcohol in accordance with current minimum random testing requirements of the OTETA. Any unfilled, covered positions will be included as part of the total number of positions counted by the district for testing rate purposes.
 - (1) The district will meet ~~exceed~~ minimum testing rates.
 - (2) ~~[In exceeding minimum testing rates, the district requires that [] percent of covered employees shall be randomly tested annually for drugs and [] percent shall be randomly tested annually for alcohol.]~~
- b. The testing rate may be adjusted by FMCSA based on industrywide data;
- c. The testing process shall, in fact, be random. Unless advised otherwise by their consortium, ~~All~~ employees will remain in the pool of drivers for each subsequent period, including vacations, holiday periods and summer recesses, whether or not they have been chosen for testing in the past;
- d. The selection of employees for random testing shall be made by a scientifically valid method. The process selected by the district will ensure that all employees shall have an equal chance of being tested each time selections are made. The district will use the following system:

~~1~~ Computerized system³:

A random number generating program will be loaded into a computer along with the employees' social security number, payroll identification number or other comparable identification number for the drivers.~~1~~

~~OR~~

~~1~~ ~~Manual system:~~

- (1) Individual, identically sized slips of paper or cards with the names or identification numbers of the covered drivers will be used;
- (2) Cards will be placed into a container from which the required number will be drawn;
- (3) The individual selected by the district to do the drawing will be unbiased;
- (4) All names in the pool will be checked prior to the drawing to assure any necessary additions or deletions are made.~~1~~

- e. All such testing shall be unannounced and dates selected spread reasonably throughout the calendar year to avoid predictability and the perception that testing is "done for the year[.]" ~~[Districts with six or less covered employees may annually select a single calendar date for random drug and alcohol testing³.~~ The date selected will be kept confidential to ensure that testing is unannounced as required by law.][;]
- f. Following notification of testing, selected employees shall proceed to the district-selected collection site immediately or as soon as practicable;

¹[The district should select either "computerized system" or "manual system" language reflected in brackets – not both.]

²The computerized system, when it can be utilized by the district, is the preferred selection method, under FMCSA guidance.

³The next "calendar year date" for random testing starts from the day after the random testing date.

- g. Employees shall only be tested for alcohol just before the driver is scheduled to perform his/her safety-sensitive function, during or just after performing such function;
- h. Employees off work due to leave of absence, vacation and layoff will be informed that they remain subject to random testing. Employees drawn for such testing will be notified and tested as soon as practicable upon return to duty but no later than the next selection cycle (e.g., monthly, quarterly, etc.).

5. Reasonable Suspicion Testing

The district shall conduct reasonable suspicion drug and alcohol testing as follows:

- a. The district will test covered employees when there is reasonable suspicion to believe that the employee has engaged in drug use or alcohol misuse;
- b. Reasonable suspicion will be based on specific contemporaneous, articulable observations made by a trained supervisor as designated by the district, concerning appearance, behavior, speech or body odors indicative of employee use of drugs or the misuse of alcohol. Observations of drug use may include indications of chronic and withdrawal effects of drugs and noticeable degradation of job performance that may be associated with the use of drugs;
- c. Hearsay or secondhand information is not sufficient to require an employee to submit to testing;
- d. Alcohol testing may be authorized only if observations resulting in reasonable suspicion are made during, just preceding or just after the period of the workday that the employee is required to be in compliance with this policy, administrative regulations and applicable OTETA provisions;
- e. A written record shall be made of the observations leading to a reasonable suspicion drug test and signed by the [supervisor] [administrator] or his/her designee authorized to make such observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier;
- f. The district will ensure that the employee under reasonable suspicion is transported to the designated collection or testing site.

6. Referrals, Evaluation and Treatment

The district shall provide information related to referrals, evaluation and treatment as follows:

- a. The district shall advise covered employees, who violate the drug and alcohol prohibitions, of referral services available for evaluating and resolving problems associated with the use of drugs and the misuse of alcohol. Such information will include the names, addresses and telephone numbers of SAPs and counseling and treatment programs;
- b. An employee who engages in such prohibited conduct shall be evaluated by an SAP;
- c. The SAP will determine what assistance if any the employee needs in resolving problems associated with drug use and alcohol misuse;
- d. This requirement applies only to current employees and not to job applicants who refuse testing or who test positive for drugs;
- e. This requirement shall not be interpreted to require the district to provide or pay for any rehabilitation costs or to hold a job open for an employee with or without salary;
- f. SAPs, as referred to in these administrative regulations, means:
 - (1) Licensed physicians with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders;

- (2) Licensed or certified psychologists, social workers or employee assistance professionals with like knowledge; and
- (3) Alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC). This does not include state-certified counselors.

7. Return-to-Duty Testing

Employees, if they continue employment and before they return to duty, shall comply with the following:

- a. When an employee has previously tested greater than or equal to 0.04 for alcohol, the employee must retest (return-to-duty test) with an alcohol concentration of less than 0.02;
- b. When an employee has previously tested positive for drug use, the employee must retest (return-to-duty test) with a verified negative test result.

8. Follow-up Testing

Employees, if they continue employment, shall comply with the following:

- a. Follow-up testing will be conducted whenever an SAP determines that an employee is in need of resolving problems associated with drug use and/or alcohol misuse;
- b. Follow-up alcohol testing will be conducted only when the employee is performing safety-sensitive functions, just before or just after the driver has performed safety-sensitive functions;
- c. Follow-up drug and alcohol testing will be unannounced⁴;
- d. The number and frequency of such tests shall be determined by the SAP. Minimally, there shall be:
 - (1) At least 6 tests in the first 12 months following the driver's return to duty;
 - (2) Testing shall not exceed 60 months from the date of the employee's return to duty. The SAP, however, may terminate the follow-up testing at any time after the first six tests if he/she determines the testing is no longer needed.

9. Drug and Alcohol Testing Procedures

The district, in cooperation with contracted collection and testing facilities, shall maintain drug and alcohol testing procedures as follows:

- a. Drugs
 - (1) The applicant or employee reports to the district-designated collection site and provides positive identification (e.g., photo ID);
 - (2) A urine sample for drug testing is provided. A "split specimen" (two urine specimen bottles) is prepared from the urine sample;
 - (3) Following completion of a chain-of-custody form, both specimen bottles are forwarded to the DHHS certified laboratory for analysis. The split specimen is stored at the laboratory for later testing as may be necessary. Initial testing is performed only on one specimen bottle;
 - (4) Testing results are reported to the district-selected MRO by mail or electronic transmission. Results may not be given over the phone;

⁴A follow-up test shall not also serve as a random test, and vice versa.

- (5) The MRO will verify both negative and positive testing results;
- (6) The MRO will report the verified negative testing results to the district;
- (7) The MRO will report verified positive testing results to the applicant or employee, discuss the type of illegal substance found and determine whether there is any valid medical reason for the positive testing results;
- (8) A verified valid medical reason for a positive test result will be reported as a negative test result to the district;
- (9) If no legitimate medical reason exists for positive drug testing, the MRO will report a confirmed positive test result and identity of the substance(s) to the district;
- (10) The employee or applicant may request within 72 hours of a positive test notice that the split specimen (second bottle) be screened. Such screening costs will be paid for by the [employee]([district]);
- (11) Unlike the original specimen analyzed for specific levels of controlled substances, the split specimen is analyzed only for the presence of drugs;
- (12) The MRO will report results of the second screening to the employee and the district;
- (13) The MRO will meet all the OTETA requirements including review of chain-of-custody control form, administrative processing of negative test results, verification of positive testing results and maintenance of confidentiality requirements as may be applicable;
- (14) Detailed drug testing procedures may be obtained by contacting the district's drug use and alcohol misuse prevention coordinator or designee.

b. Alcohol

- (1) The employee reports to the district-designated testing site and provides positive identification;
- (2) Under the alcohol testing rule, an alcohol test result will be considered failing even if over-the-counter or legally prescribed medication is involved;
- (3) All alcohol screening tests will be conducted by:

~~A~~ A qualified breath alcohol technician using evidential breath testing devices. ~~;~~

~~OR~~

~~[A qualified screening test technician using an alcohol screening device other than an evidential breath testing device.]~~

- (4) Testing may be conducted at a DHHS certified laboratory or other location including mobile facilities equipped for such testing as may meet the requirements of the OTETA;
- (5) District supervisors should generally not be used as a breath alcohol or screening test technician for covered employees. Under certain circumstances, a properly trained district supervisor may conduct such testing in the absence of another technician;
- (6) The employee submits to breath or saliva testing;
- (7) If the result of the testing indicates an alcohol concentration rate of 0.02 or greater, a confirmation breath test is administered after at least 15 minutes, but no longer than 30 minutes, after the initial testing. All confirmation tests will be conducted using evidential breath testing devices;
- (8) The technician will report any invalid tests, confirmed failing and passing results to the district;
- (9) Employee refusal to sign forms as required (i.e., Step 2 on the Alcohol Testing Form) shall be considered as refusal to be tested;

⁵[The district should select one of the bracketed language options – not both.]

- (10) The breath alcohol or screening test technician will meet all OTETA requirements including such testing procedures, Alcohol Testing Form and confidentiality requirements as may be required;
- (11) Detailed alcohol testing procedures may be obtained by contacting the district's drug use and alcohol misuse prevention program coordinator or designee.

10. Positive Test Result

When the MRO determines a positive test result is valid, the MRO will report the finding to the Oregon Department of Transportation (ODOT) and the Oregon Department of Education. The person who is the subject of the test results will be notified by ODOT that the person has a right to a hearing to determine whether the test results reported will be placed in the employee's employment driving record.

11. Record Keeping/Record Reporting

The district shall maintain records of its drug use and alcohol misuse prevention program as follows:

a. Records related to the collection process:

- (1) Documents relating to the random selection process;
- (2) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol testing;
- (3) Documents generated in connection with decisions on postaccident testing;
- (4) Documents verifying the existence of an explanation of the inability of an employee to provide adequate breath or to provide a urine specimen for testing;
- (5) An annual calendar year report summarizing results of the district's drug use and alcohol misuse prevention program will be prepared and maintained when requested by FMCSA as part of an inspection, investigation, special study or for statistical purposes.

If alcohol testing is provided directly by the district, include the following additional record-keeping requirements.

- (6) Collection logbooks, if used;
- (7) Calibration documentation for evidential testing devices;
- (8) Documentation of breath alcohol or screening test technician training.

b. Records related to a driver's test results, including:

- (1) The district's copy of the alcohol testing form, including the test results;
- (2) The district's copy of the controlled substance test custody and control form;
- (3) Documents sent by the MRO to the district;
- (4) Documents related to the refusal of any employee to submit to drug and/or alcohol testing;
- (5) Documents presented by a driver to dispute the results of a drug and/or alcohol test administered in connection with the requirements of the OTETA.

- c. Records related to evaluations as follows:
 - (1) Records pertaining to a determination by an SAP concerning his/her evaluation of a covered employee who tested positive for drugs, or failed an alcohol test or refused to test;
 - (2) Records concerning a driver's compliance with recommendations of the SAP.

- d. Records related to education and training as follows:
 - (1) Materials on drug use awareness and alcohol misuse including a copy of the district's policy and administrative regulations on drug use and alcohol misuse and related information;
 - (2) Driver's signed receipt of education materials;
 - (3) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and/or alcohol testing based on reasonable suspicion;
 - (4) Certification that any training conducted in compliance with the OTETA meets all pertinent requirements for such training.

- e. Records related to alcohol and drug testing as follows:
 - (1) Agreements with collection site facilities, laboratories, MROs and consortia (includes breath alcohol technicians, screening test technicians and third party providers), as applicable;
 - (2) Names and positions of officials and their role in the district's drug and alcohol testing program(s);
 - (3) Semiannual laboratory statistical summaries of urinalysis as required by the OTETA and as reported by the laboratory. The district will document laboratory failures to provide statistical summaries and any district follow-up efforts to obtain such reports.

- f. Records will be retained by the district as follows:
 - (1) Five Years:
 - (a) Records of employee alcohol-testing results with results indicating an alcohol concentration of 0.02 or greater;
 - (b) Records of verified positive drug testing results;
 - (c) Documentation of refusals to take required drug and/or alcohol tests;
 - (d) Drug testing custody and control forms;
 - (e) Employee evaluation and referrals;
 - (f) A copy of each annual calendar year report summary [X];
 - (g) Equipment calibration documentation as applicable (See 11. a. (6), (7) and (8)).

 - (2) Two Years:

Records related to the drug and alcohol collection process (except calibration of evidential breath testing devices).

(3) One Year:

Records of negative and cancelled drug-testing results and alcohol test results with a concentration of less than 0.02.

(4) Indefinite Period:

Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors and drivers shall be maintained by the district while the individual performs the functions which require training and for two years after ceasing to perform those functions.

g. Records will be maintained in a secure location with controlled access to ensure confidentiality requirements are met as follows:

- (1) Drug use and alcohol misuse prevention program records will be maintained at the district office. Records relating to individual employee drug and/or alcohol testing, evaluation and treatment will be maintained separately from the employee's personnel file;
- (2) Employees are entitled upon written request to obtain copies;
- (3) The district may disclose information in connection with employee benefit proceedings, Department of Transportation agency action against an employee or National Transportation Safety Board safety investigations;
- (4) The district shall disclose such information to subsequent employers upon written request from the employee (in accordance with 49 C.F.R. § 382.413(a)(1))⁶;
- (5) The district will provide access to any drug and alcohol collection and/or testing facility maintained by the district as described by the OTETA (i.e., those federal agencies, state and local officials who have regulatory authority over the district's covered employees).

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⁶Information that must be disclosed to subsequent employers, upon receipt of proper authorization form/release signed by the employer's ex-driver: (a) Failed alcohol tests (breath alcohol content of 0.04 or greater); (b) Verified positive drug test; (c) Refusals to test.