

## All Personnel

### Alcohol and Controlled Substance Testing

The district's controlled substance and alcohol testing program shall apply to all employees who operate a commercial motor vehicle, including any vehicle designed to transport 16 or more passengers. This includes casual, intermittent or occasional drivers as well as full-time, regularly employed drivers. (49 C.F.R. 382.107)

The Superintendent or designee shall contract for collection and testing services and shall ensure that testing procedures and facilities used for the tests conform with the requirements of the Code of Federal Regulations, Title 49, Part 40.

Drivers shall inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Drivers using such a substance may continue to perform safety-sensitive functions only if the physician has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle. (49 C.F.R. 382.213)

### **Definitions**

1. Accident is an incident involving a commercial motor vehicle in which there is either a fatality and/or a citation.
2. Alcohol is the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.
3. Alcohol use is the consumption of any beverage, mixture, preparation or medication containing alcohol.
4. Breath alcohol technician (BAT) is an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).
5. Commercial motor vehicle is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle
  - a. 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.
  - b. Has a gross vehicle weight rating of 26,001 or more pounds.
  - c. Is designed to transport 16 or more passengers, including the driver.
  - d. Is of any size and is used in the transportation of hazardous materials requiring placards.

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6. Confirmation test, for alcohol testing, is a second test that provides quantitative data of alcohol concentration following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath. For controlled substances testing, it is a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy.
7. Covered employee is an employee subject to the requirements of applicable Federal law, and this regulation.
8. Driver is any person who operates a commercial motor vehicle. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.
9. Employer is any person (including the United States, a State, the District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle, including agents, officers, and representatives of the employer. The Lompoc Unified School District is the employer.
10. Evidential breath testing device (EBT) is a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).
11. Medical review officer (MRO) is 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.
12. On-duty time, as the phrase is defined by federal regulations and this policy, means all of the time from the time a covered employee begins to work, is required to be in readiness to work, until the time he or she is relieved for work and all responsibility for performing work.
13. Performing (a safety-sensitive function) is any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.
14. Refusal to submit (to an alcohol or controlled substance test) is when a driver:
  - a. Fails to provide adequate breath for testing with a valid medical explanation after he or she has received notice of the requirement of the requirement of breath testing,

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- b. Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or
  - c. Engages in conduct that clearly obstructs the testing process.
15. Safety-sensitive function, for purposes of this policy, shall mean any of the functions defined in Title 49 of the Code of Federal Regulations. More specifically, safety-sensitive functions include all functions performed by a covered employee during on-duty time and include:
- a. All time at a carrier or shipper plant, terminal, facility, or other property waiting to be dispatched, unless the driver has been relieved from duty by the employer.
  - b. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs) or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
  - c. All time spent at the driving controls of a commercial motor vehicle.
  - d. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
  - e. All time loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
  - f. All time spent performing the driver requirements associated with an accident.
  - g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
  - h. All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the testing requirements.
16. Screening test (a.k.a. initial test) in alcohol testing, is 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 is an immunoassay screen to eliminate negative urine specimens from further consideration.

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17. Substance abuse professional is a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of a clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

**Prohibited Conduct**

1. No covered employee shall report for duty, or remain on duty requiring the performance of safety-sensitive functions, while having an alcohol concentration of 0.04 or greater.
2. No covered employee shall remain on duty, or operate a commercial motor vehicle, while that employee possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter), unless the packaging seal is unbroken.
3. No covered employee shall use alcohol during on-duty time.
4. No covered employee shall perform safety-sensitive functions within four hours after using alcohol.
5. No covered employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident or until he or she undergoes a post-accident alcohol test.
6. No covered employee shall refuse to submit to any test required by law or this policy.
7. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions, when the covered employee uses any controlled substances, except when the use is pursuant to the instructions of a physician who has advised the driver that the substances does not adversely affect the driver's ability to safely operate a commercial vehicle.

**Consequences of Prohibited Conduct**

1. No covered employee shall return to duty or remain on duty to perform safety-sensitive functions if the covered employee has engaged in conduct prohibited by this Policy, unless the covered employee successfully fulfills the conditions set forth in this Policy.

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2. Any covered employee tested under this Policy who is found to have an alcohol concentration equal to or greater than 0.04, or who tests positive on a verified controlled substances test, shall not continue to perform safety-sensitive functions for the employer. In the event that the employee is not terminated, the covered employee shall not resume the performance of safety-sensitive functions until the employee produces a Return-to-Duty test with a result indicating an alcohol concentration of less than 0.02, and/or a result indicating a negative result for controlled substances use. The employee is subject to follow-up testing.

### **Other Alcohol Related Conduct**

Although the following conduct is unacceptable, it is not considered to be "prohibited conduct" for the purposes of this policy. As outlined in this policy, engaging in prohibited conduct has the specific consequences not applicable to this section.

### **Consequences of Alcohol Related Conduct**

1. No covered employee found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall 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.
2. The employee shall not perform safety-sensitive functions until the employee produces a Return to Duty Test with a result indicating an alcohol concentration of less than 0.02.
3. The employee is subject to follow-up alcohol tests.

### **Pre-Employment Tests**

A pre-employment drug test shall be required of an applicant only after he/she has been offered the position. Drug tests shall be conducted before the first time a driver performs any safety-sensitive function for the district. (49 C.F.R. 382.301)

Safety-sensitive functions include all on-duty functions performed from the time a driver begins work or is required to be ready to work until he/she is relieved from work and all responsibility for performing work. It includes driving; waiting to be dispatched; inspecting and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing driver requirements related to accidents; and performing any other work for the district or paid work for any other entity. (49 C.F.R. 382.107, 395.2)

Exceptions may be made for drivers who have participated in the drug testing program required by law within the previous 30 days, provided that the district has been able to make all verifications required by law. (49 C.F.R. 382.301)

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Pre-employment testing shall also be required of employees returning to work after a layoff period if the employee was removed from the random testing pool. If the employee remains in the random testing pool, additional testing shall not be necessary. (49 C.F.R. 382.301) (cf. 4112.41 - Pre-Employment Drug/Alcohol Testing)

The Employer reserves the right not to employ any applicant who has received a controlled substances test indicating a verified positive test result. The applicant is responsible for any costs associated with pre-employment testing.

### **Post-Accident Tests**

Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable on any driver:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of human life. (49 C.F.R. 382.303)
2. Who receives a citation under state or local law for a moving traffic violation arising from the accident. (49 C.F.R. 382.303)

Drivers shall make themselves readily available for testing, absent the need for immediate medical attention, or may be deemed by the Employer to have refused testing. (49 C.F.R. 382.303)

No such driver shall use alcohol for eight hours after the accident, or until after he/she undergoes a post-accident alcohol test, whichever occurs first. (49 C.F.R. 382.209) If an alcohol test is not administered within two hours of the accident or if a drug test is not administered within 32 hours, the district shall prepare and maintain records explaining why the test was not conducted. Tests shall not be given if not administered within eight hours after the accident for alcohol or within 32 hours for drugs. (49 C.F.R. 382.303)

Tests conducted by authorized federal, state or local officials shall fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the district. Breath tests will validate only the alcohol test and cannot be used to fulfill controlled substance testing obligations. (49 C.F.R. 382.303)

### **Random Tests**

Alcohol and drug tests shall be conducted on a random basis at unannounced times throughout the calendar year. The minimum annual percentage rate for random alcohol testing shall be twenty-five percent (25%) of the average number of covered employees, until further notification is received from the Federal Department of Transportation. The minimum annual percentage rate for controlled substances testing shall be fifty percent (50%) of the average number of covered employees, until further notification is received from the Federal Department of Transportation.

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Drivers shall be selected by a scientifically valid random process, and each driver shall have an equal chance of being tested each time selections are made. Tests for alcohol shall be conducted just before, during or just after the performance of safety-sensitive functions. (49 C.F.R. 382.305)

The employer shall ensure that the random tests are unannounced and that the dates for administering the random tests are spread reasonably throughout the calendar year. Every covered employee who is notified of selection for random testing shall cease to perform safety-sensitive functions and shall immediately proceed to the test site.

Substitute employees, if they are also covered employees, are subject to random testing. Substitute drivers will be required to sign a release authorizing the District to release testing information/results to other school districts for which the driver is employed. Substitute drivers will be required to sign the release as a condition of being placed on the District's substitute driver list.

Employees off work due to leaves, vacation and layoffs shall be informed that they remain subject to random testing. The employer will keep the original selection confidential until the employee returns at which time they will be tested as soon as practicable after they return to duty.

**Reasonable Suspicion Tests**

An alcohol or drug test shall be conducted if a supervisor or district official trained in accordance with law has reasonable suspicion that a driver has violated the district's alcohol or drug prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances. (49 C.F.R. 382.307)

Alcohol tests are authorized for reasonable suspicion only if the required observations are made during, just before or just after the period of the work day when the driver must comply with alcohol prohibitions. An alcohol test may not be conducted by the person who determines that reasonable suspicion exists to conduct such a test. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the district shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after eight hours. (49 C.F.R. 382.307)

A supervisor or district official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of his/her observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier. (49 C.F.R. 382.307)

The Superintendent or designee shall ensure that an employee under reasonable suspicion is transported to the designated collection or testing site.

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#### **Enforcement**

Any driver who refuses to submit to a post-accident, random or reasonable suspicion test, or to a follow-up test as described below, shall not perform or continue to perform safety-sensitive functions. (49 C.F.R. 382.211) Therefore, any driver who so refuses shall be immediately suspended and subject to disciplinary action, up to and including dismissal. (cf. 4117.4 - Dismissal) (cf. 4118 - Suspension/Disciplinary Action) (cf. 4218 - Dismissal/Suspension/Disciplinary Action)

A driver who is tested and found to have an alcohol concentration of .02 or greater but less than .04 may not perform or continue to perform safety-sensitive functions including driving a commercial motor vehicle until the start of the driver's next regularly scheduled duty period, but not less than 24 hours after the test was administered. (49 C.F.R. 382.505)

A driver who tests positive for drugs or is found to have an alcohol concentration of .04 or greater shall be subject to disciplinary action up to and including dismissal.

A driver who violates district prohibitions related to drugs and alcohol shall receive from the district the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs available to evaluate and resolve drug and alcohol-related problems. The employee shall be evaluated by a substance abuse professional who shall determine what help, if any, the driver needs in resolving such a problem. Any substance abuse professional who determines that a driver needs assistance shall not refer the driver to a private practice, person or organization in which he/she has a financial interest, except under circumstances allowed by law. (49 C.F.R. 382.605)

An employee identified as needing help in resolving a drug or alcohol problem shall be evaluated by a substance abuse professional to determine that he/she has properly followed the prescribed rehabilitation program. (49 C.F.R. 382.605)

#### **Return-to-Duty Tests**

If a driver who has violated the district's drug or alcohol prohibition is returned to performing safety-sensitive duties, a drug or alcohol test shall be conducted. (49 C.F.R. 382.309) Employees whose conduct involved drugs shall not return to duty in a safety-sensitive function until the return-to-duty drug test produces a verified negative result. Employees whose conduct involved alcohol shall not return to duty in a safety-sensitive function until the return-to-duty alcohol test indicates an alcohol concentration of less than .02. (49 C.F.R. 382.605)

#### **Follow-up Tests**

A driver who violates the district's drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance

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abuse professional in accordance with law. Follow-up alcohol testing shall be conducted just before, during or just after the time when the driver is performing safety-sensitive functions. (49 C.F.R. 382.311)

Follow-up testing shall consist of at least six tests in the first 12 months following the driver's return to duty. The substance abuse professional may terminate the follow-up testing at any time after the first six tests if he/she determines that testing is no longer needed. Testing shall not occur beyond 60 months from the date of the driver's return to duty. (49 C.F.R. 382.605)

### **Maintenance of Records**

Employee drug and alcohol test results and records shall be maintained under strict confidentiality and released only in accordance with law. Upon written request, a driver shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug or alcohol tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the driver. (49 C.F.R. 382.405) (cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

### **Compensation**

A covered employee who fails a required test shall not receive his or her normal compensation for hours during which the employee is prohibited by Federal law, and this policy, from performing a safety-sensitive function. Failure is defined as a verified positive result by an MRO for controlled substances and/or an alcohol concentration of 0.02 or greater. The employee may utilize sick time, vacation, or compensatory time during the period the prohibition is in place for a maximum of one day when an alcohol test is from 0.02 to 0.039. Covered employees who test positive on an initial test who are later determined to be not positive shall be fully restored in status and compensation.

### **Previous Employment Information**

Upon application to a covered position, applicants shall be required to sign a release authorizing the employer to obtain testing information from the applicant's previous employers. The applicant's signature on the release shall be a condition of employment.

The information shall include:

1. Any alcohol test results with a concentration of 0.04 or above.
2. Any positive controlled substances test results.
3. Any refusals to be tested.

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Upon offering an applicant a position, the employer shall endeavor to obtain the information within 14 calendar days. Should the information reveal that the applicant is not eligible to perform safety-sensitive functions (pursuant to 49 CFR pt. 382.413 (g), the employer shall withdraw the employment offer.

**Notifications**

Each driver shall receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the district's policy and regulations for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. The information shall identify all of the following: (49 C.F.R. 382.601)

1. The person designated by the district to answer drivers' questions about the materials.
2. The categories of drivers who are subject to the Code of Federal Regulations, Title 49, Part 382.
3. Sufficient information about the safety-sensitive functions performed by drivers to make clear what period of the work day the driver is required to comply with Part 382.
4. Specific information concerning driver conduct that is prohibited by Part 382.
5. The circumstances under which a driver will be tested for drugs and/or alcohol under Part 382.
6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of test results, and ensure that test results are attributed to the correct driver.
7. The requirement that a driver submit to drug and alcohol tests administered in accordance with Part 382.
8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences.
9. The consequences for drivers found to have violated the drug and alcohol prohibitions of Part 382, including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation and treatment.
10. The consequences for drivers found to have an alcohol concentration of .02 or greater but less than .04.

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11. The effects of drugs and alcohol on an individual's health, work and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a coworker's); and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management. (49 C.F.R. 382.601) (cf. 4159 /4259/4359 - Employee Assistance Programs)
12. Other legal requirements, district policies and disciplinary consequences related to the use of alcohol and drugs. (cf. 4020 - Drug and Alcohol-Free Workplace)

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. (49 C.F.R. 382.601) (cf. 4112.9 - Employee Notifications)

Before any driver operates a commercial motor vehicle, the district shall provide him/her with post-accident procedures that will make it possible to comply with post-accident testing requirements. (49 C.F.R. 382.303)

Before drug and alcohol tests are performed pursuant to the Code of Federal Regulations, Title 49, Part 382, the district shall inform drivers that the tests are required by these regulations. (49 C.F.R. 382.113) The district shall notify a driver of the results of a pre-employment drug test if the driver requests such results within 60 calendar days of being notified of the disposition of his/her employment application. (49 C.F.R. 382.411)

The district shall notify a driver of the results of random, reasonable suspicion and post-accident drug tests if the test results are verified positive. The district shall also tell the driver which controlled substance(s) were verified as positive. (49 C.F.R. 382.411)