

Policy

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HORTONVILLE AREA SCHOOL DISTRICT

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SUBSTANCE ABUSE FOR COMMERCIAL DRIVERS

This Policy incorporates the requirements of 49 CFR (Code of Federal Regulations) Part 40 “Procedures for Transportation Workplace Drug Testing Programs”. It contains guidelines of considerations for compliance with 49 CFR Part 40. Participation in the controlled substances and alcohol testing program is a requirement of each driver/employee, and therefore, is a condition of employment.

The Hortonville Area School District is committed to providing safe and efficient service to all who are transported by our transportation personnel. Our employees are our most valuable resource in ensuring the quality of this service. One goal of this District is, therefore, to provide our employees with a workplace environment that promotes health and safety.

In order to meet this goal, we endorse the Federal Highway Administration’s (FHWA) drug and alcohol policy and regulations. The District will not tolerate unauthorized use, abuse, possession or sale of controlled substances by its employees. Drug and alcohol testing is an integral part of our program. In addition to this policy, the District will provide drivers with information regarding: 1) the effects of drugs and alcohol on an individual’s health, work and personal life; 2) signs and symptoms of a drug or alcohol problem; and 3) the available methods of intervention when a problem does exist. This policy is subject to change without further notice for compliance with Federal Regulations. When changes occur, employees will be notified.

Controlled Substances and Alcohol Policy for Employees that Transport Students, a safety-sensitive employee is defined as an individual who is waiting to be dispatched, inspecting equipment, servicing, driving, loading or unloading District vehicles, as well as repairing, obtaining assistance, or remaining in attendance upon a disabled District vehicle. This term further includes any period in which an individual actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

Implementation:

Designated Employer Representative

The Designated Employer Representative (DER) is the individual identified by the Hortonville Area School District as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes.

Each driver must review this policy, clarify all questions and/or concerns with the DER, and sign an Acknowledgement of Receipt form, which indicates that the driver has received this substance abuse policy and understands that all conditions within are also conditions of employment. The District’s DER is Harry Steenbock, located at W6679 County Road JJ Greenville WI 54942 (920) 757-7045.

Categories of Covered Drivers (§382.103)

The Federal Motor Carrier Safety Administration (FMCSA) regulations require alcohol and drug testing of drivers, who are required to have a Commercial Driver’s License (CDL) including any person (volunteer

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or paid) who operates a Commercial Motor Vehicle (CMV) and is required to have a CDL. This includes, but is not limited to:

- Full-time, regularly employed drivers
- Leased drivers
- Independent owner-operator contractors (employed directly or leased)
- Casual, intermittent, or occasional drivers.

Required Hours of Compliance

A driver must not consume alcohol while on duty (§382.205) four hours prior to on duty time (§387.207) and up to eight hours following an accident or until the employee undergoes a post-accident test, whichever occurs first (§382.209). A driver shall not report for duty or remain on duty that requires performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is at the instruction of a physician who has advised the driver that the substance will not adversely affect the ability to safely operate a CMV (§382.213).

PROHIBITED CONDUCT

Prohibited Alcohol Conduct

Drivers are prohibited from any alcohol misuse that could affect performance of a safety-sensitive function, including:

- Use while performing safety-sensitive functions
- Use during the 4-hours before performing safety-sensitive functions
- Reporting for duty or remaining on duty to perform safety-sensitive functions with an alcohol concentration of .02 or greater
- Use during 8 hours following an accident, or until the driver undergoes a post-accident test
- Refusal to take a required test

Prohibited Drug Use

Any drug use that could affect performance of safety-sensitive functions is prohibited. A driver shall not report for duty or remain on duty that requires performing safety-sensitive functions when the driver uses any controlled substance, except when the use is at the instruction of a physician who has advised the driver that the substance does not adversely affect the ability to safely operate a CMV (382.213). Any unauthorized use of the controlled substances is prohibited. Illicit use of drugs by safety-sensitive drivers is prohibited on or off duty. Also prohibited is testing positive for drugs, and/or refusing to take a required test.

Prescription Drug Use

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. The use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to the DER and the driver is required to provide a written release from his/her doctor or pharmacist indicating that the driver can perform his/her safety-sensitive functions.

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The District may require a driver to consent to allow the District to consult with the driver's personal physician or other medical practitioner to determine if such prescription drugs or medication produce hazardous effects that might restrict the driver's ability to perform his or her normal work activity, or which may pose a hazard to other drivers. The District may reassign a driver to other work, (if such work is available) that would meet the restrictions placed by those medical practitioners until the use of the prescription drug has ended.

Safety-Sensitive Function

Safety-sensitive function means 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:

- All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting equipment as required by §392.7 and §392.8 of this sub-chapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- 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 §393.76 of this sub-chapter);
- 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, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

CIRCUMSTANCES FOR TESTING

Pre-Employment (§382.301)

This test is required and negative results must be received before the District will allow a driver to perform a safety sensitive function. The pre-employment test is required for controlled substances. Alcohol testing is permitted.

All offers by the District to hire an applicant for a driver position are conditioned upon: a) completing the District's general consent and release to be tested; b) a negative result on the test(s); c) completing the District's authorization to obtain past drug and alcohol results from previous employer(s); d) passing the DOT-required physical exam; e) complying with any other District conditions or requirements at the time of offer.

Any applicant who refuses or fails to complete the District's consent and release to be tested, who refuses or fails to complete the District's authorization to obtain required background information from previous employers, or whose test result is non-negative, will not be considered eligible to work for the District.

Post-accident (§382.303)

Testing is required after accident when there is:

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- A fatality; or
- The driver is cited for a moving violation AND either
 - One or more vehicles incurs disabling damage and is towed from the scene; or
 - Someone is medically evacuated from the scene

A driver who has an accident while performing safety-sensitive function must submit to a post-accident test as soon as possible. Drivers must make themselves available after an accident for the test. A driver who leaves the scene of an accident without appropriate authorization prior to testing will be considered to have refused the test (see Consequences). Alcohol testing should be done within 2 hours after the accident and cannot be tested post-accident after 8 hours from the time of the incident. Drivers are advised not to consume any alcohol for 8 hours after an accident or until after testing is complete. Urine testing must be done within 32 hours from the time of event. The District, independent of FMCSA regulations, may require testing of any other employee whose performance may have contributed to an accident under this section, for example, maintenance or dispatching employees.

Reasonable Suspicion (§382.305)

Reasonable Suspicion testing will be done when a trained supervisor has a reasonable suspicion to believe that the driver has used alcohol and/or controlled substances. The suspicion is based on specific observations by the supervisor or district official concerning a driver's current appearance, behavior, speech and smell that are usually associated with drug or alcohol use. These observations must be documented. A driver who is required to submit to a reasonable suspicion test will be escorted by a District official to the collection site for testing. Per District policy, the driver will be suspended without pay pending results of the test. If the test result is negative, the driver will be made whole for wages lost while waiting test results.

Random (§382.305)

Random testing is conducted on a random unannounced basis just before, during, or just after performance of safety-sensitive functions. Random alcohol tests should only be administered just prior to a driver performing a safety-sensitive function, while performing a safety-sensitive function, or just after performing a safety-sensitive function. Random controlled substances tests can be conducted at any time the driver is notified.

The selection for random testing is by a scientifically valid method and all drivers covered by this rule have an equal chance of being tested. The names of drivers who are selected for testing are kept confidential until such time that the driver is notified to take the test. Once the driver is notified, he/she must immediately proceed to the testing facility and undergo testing. (Immediately meaning that after notification, all the driver's actions must lead to an immediate specimen collection.) Every driver's name that is selected for testing is returned to the selection pool so that all drivers have an equal chance of being selected at any time. The rates of random selection are determined by the DOT.

Return-to-Duty and Follow-Up Testing (§382.309 and §382.311)

Although the driver's employment will be terminated following violation of the prohibited alcohol and/or drug rule, the driver is advised that Return-to-Duty and Follow-Up Testing is required for return to performing safety-sensitive duties for any employer. Follow-up tests are unannounced and are

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performed in addition to any other DOT-required tests (random, post-accident, etc.). At least 6 tests must be conducted in the first 12 months after a driver returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The requirements for Return-To-Duty and Follow-Up Testing will be performed in accordance with 49 CFR Part 40 Subpart O. 49 CFR 40.67(b) requires direct observation of all follow-up and return-to-duty tests.

PROCEDURE FOR TESTING

Alcohol

For the screening test, any evidential breath testing (EBT) device or alcohol screening device (ASD) may be used, listed on the NHTSHA's conforming products list. For the confirmation test, only EBTs listed on NHTSHA's conforming products list (without an asterisk) will be used. Two tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted. The driver and the individual conducting the confirmation breath test (called a breath alcohol technician (BAT)) complete the alcohol testing form to ensure that the results are properly recorded. The confirmation test, if required, must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results. The confirmation test results determine any actions taken.

Testing procedures that ensure accuracy, reliability and confidentiality of test results are outlined in the 49 CFR Part 40. These procedures include training and proficiency requirements for the screening test technicians (STT), breath alcohol technicians (BAT), quality assurance plans for the breath testing devices (including calibration requirements for a suitable test location), and protection of driver test records.

Drugs

Drug testing is conducted by analyzing a driver's urine specimen. The analysis is performed at laboratories certified and monitored by the Department of Health and Human Services (DHHS). The driver provides a urine specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain of custody document, and prepares the specimen and accompanying paperwork for shipment to a drug-testing laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification, and integrity are not compromised. The testing is a two-stage process. First, a screening test is performed. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications or preparations are not reported as positive results.

The Omnibus Transportation Employee Testing Act of 1991 requires that drug testing procedures for commercial motor vehicle drivers include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Both bottles are sent to a laboratory. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory. If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the driver has 72 hours to request the split specimen be sent to another

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DHHS-certified laboratory for analysis. This split specimen procedure essentially provides the driver with an opportunity for a "second opinion". Testing of the split specimen is done at the driver's own expense.

All urine specimens are analyzed for the following drugs:

- Marijuana metabolites/THC
- Cocaine metabolites
- Amphetamines and Methamphetamine
- Opioids metabolites (Heroin, Codeine, Morphine)
- Phencyclidine (PCP)

Medical Review Officer (MRO)

All drug test results are reviewed and interpreted by a Medical Review Officer (MRO) before they are reported to the employer. If the laboratory reports a positive result to the MRO, the MRO contacts the driver and conducts an interview to determine if there is an alternative medical explanation for the drugs found in the driver's urine specimen. If the driver provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer.

Confidentiality

The District will strictly adhere to all standards of confidentiality. Testing records and results will be released only to those authorized by the FMCSA to receive such information (§382.405).

Behavior That Constitutes a Refusal (382.211)

No driver shall refuse to submit to a required post-accident, random, reasonable suspicion or a follow-up test. A driver who refuses to submit to such tests will not be able to perform or continue to perform safety-sensitive functions. Any refusal will be treated in the same manner as a positive test result (See Consequences).

Refusal to submit (to an alcohol or controlled substances test) means that a driver:

- Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer.
- Fails to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences a pre-employment test is not deemed to have refused to test;
- Fails to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen;
- Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- Fails or declines to take a second test the employer or collector has directed the driver to take;

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- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
- Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or
- Is reported by the MRO as having a verified adulterated or substituted test result.

Consequences

Any driver who refuses any required test, or tests positive for a controlled substance or alcohol, or has any non-negative test result, will be considered to be medically unqualified to drive and/or perform any other safety-sensitive function and will be subject to disciplinary action up to and including discharge.

Alcohol

Drivers with an alcohol concentration of .02-.39 will be suspended without pay until their next regular duty period, but not less than 24 hours following the administration of the test (382.505). The District, independent of FMCSA regulations, will require **a driver to undergo** a Return-To-Duty test with a result of less than .02 and **the driver will be** subject to disciplinary action. **A driver being found with a** second occurrence of an alcohol concentration of .02-.39 within three years of the first occurrence, or any other violation of this policy in any manner, will result in immediate termination.

Drivers who engage in prohibited alcohol conduct with an alcohol concentration of .02 and above may be immediately removed from safety-sensitive function and suspended without pay. Drivers are subject to disciplinary action, which will include termination of employment. These disciplinary actions are employer-mandated, not FMCSA-mandated.

The driver will be provided SAP information including how to find a SAP (Substance Abuse Professional). Drivers who have engaged in alcohol misuse cannot return to safety-sensitive duties (for any employer) until they have been evaluated by a Substance Abuse Professional and complied with any and all treatment recommendations.

Drugs

A driver will be removed from safety-sensitive duty and suspended without pay if he/she has a positive drug test result. With the exception of reasonable suspicion testing, the removal will not take place until the MRO has interviewed the driver and determined that the positive drug test resulted from the unauthorized use of a controlled substance.

Violation of any portion of this Policy will result in disciplinary action up to and including discharge.

The driver will be provided SAP information including how to find a SAP (Substance Abuse Professional). A driver cannot return to safety-sensitive duties (for any employer) until he/she has been evaluated by a Substance Abuse Professional, has complied with recommended rehabilitation, and has a negative result on a return-to-duty drug test. Follow-up testing to monitor the driver's continued abstinence from drug use is also required.

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Any assessment and follow-up evaluation done by a Substance Abuse Professional is done at the employee's own expense.

Adulterated, Substituted or Dilute Specimens

Adulterated or substituted specimens will be treated as a "refusal to test/submit" and subject to the "Consequences" section of this policy.

The District will follow the DOT guidelines/process for dilute specimens and will treat diluted specimens as specified:

- Positive results on dilute specimens are treated as positives; the employee does not have to take another test.
- The District requires an employee with a dilute negative result to immediately submit to a second test. The District will accept the results of the second test regardless of whether the second test is dilute or not.

INSUFFICIENT OR NO SPECIMENS

Shy Bladder

Drivers who are unable to provide a urine specimen on the initial attempt must remain at the collection site. DOT Shy Bladder Evaluation Guidelines will be used. When the collector notifies the DER that the employee has not provided a sufficient amount of urine, the District will, after consulting with the MRO direct the employee to obtain, within five working days, an evaluation from a licensed physician (at the employee's expense), acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.

- The MRO will cancel the test if he/she determines that, based on the medical evaluation; the employee has a medical condition which prevents him/her from providing a sufficient amount of urine:
The MRO and The District will take no further action.
- The MRO will indicate a refusal to test if he/she determines that, based on the medical evaluation; the employee does not have a medical condition which prevents him/her from providing a sufficient amount of urine:
The District will remove the employee from performing job functions in accordance with the "Consequences" section of this policy.

Shy Lung

When a breath alcohol technician or screening test technician notifies the DER that the driver has not provided a sufficient amount of breath, the District will direct the employee to obtain, at the driver's own expense, within five working days, an evaluation from a licensed physician, acceptable to the District, who has expertise in the medical issues raised by the driver's failure to provide a sufficient specimen.

Direct Observation/Monitored Collection 49 CFR part 40.67(b)

Under certain conditions, the District or urine collection site personnel may require a driver to submit to monitored or direct observation collections with no advance notice, as directed by the collection site

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personnel, but with an explanation as to why. The process for observed/monitored collections follows the Observed/Monitored Collection Guidelines by the DOT.

A driver's refusal to provide a urine specimen under monitored collection or direct observation when warranted under this policy is considered a refusal and subject to the "Consequences" section of this policy.

49 CFR 40.67(b) requires direct observation of all follow-up and return-to-duty tests.

Employee Assistance Program

Early recognition and treatment of alcohol, drugs, or other controlled substances is important for successful rehabilitation. Hortonville Area School District encourages employees to voluntarily seek help for substance abuse problems. The District offers an Employee Assistance Program (EAP) benefit to employees and their dependents. The EAP provides confidential assessment, referral and short-term counseling for employees or their dependents who need or request it. Employees are encouraged to seek assistance to any personal issue that may affect their job performance by contacting the District's EAP provider.

The District has established a training program to ensure that all employees are aware of the effects and consequences of alcohol or controlled substance use on personal health, safety and the work environment.

Return-to-Duty (Safety Sensitive Positions)

Employees who are removed from performing safety-sensitive functions as a result of this policy must take and pass a return-to-work test before returning to performing safety-sensitive functions. The return-to-duty test will not occur until after a Substance Abuse Professional (SAP) has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

Subject to any legal requirements, employees who are eligible to return to performance safety-sensitive functions may not do so without the approval of the District Administrator.

ASSOCIATED INFORMATION:

<http://www.fmcsa.dot.gov/rules-regulations/topics/drug/engtesting.htm>

<http://www.fmcsa.dot.gov/safety-security/safety-initiatives/drugs/drug-guidelines.htm>

49 C.F.R. 382.101 et seq.

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