



## FEDERAL DRUG AND ALCOHOL TESTING POLICY

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### **PURPOSE**

It is the policy of **DIOCESE OF EVANSVILLE** that federally regulated employees and employees in safety sensitive positions are free of substance abuse and alcohol abuse. Consequently, the use of illegal drugs by employees is prohibited. Further, employees shall not use alcohol or engage in "prohibited conduct" as defined herein. The overall goal of this policy is to ensure a drug and alcohol-free environment and to reduce accidents, injuries, and fatalities. A copy of this policy and information regarding the harmful effects of drugs and alcohol is available to all employees. The Designated Employer Representative (DER) is designated as the person to answer questions regarding this policy.

### **SAFETY SENSITIVE FUNCTION**

Definition: *Safety-sensitive function* is all time spent either waiting to be dispatched; inspecting equipment or otherwise inspecting, servicing, and/or conditioning any commercial motor vehicle; driving; in or upon a commercial motor vehicle; loading/unloading a vehicle, supervising or assisting in the loading/unloading process, attending a vehicle being loaded/unloaded, remaining in readiness to operate a vehicle, or giving or receiving receipts for shipments loaded/unloaded; performing accident-related duties; or repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. A supervisor, mechanic or clerk, etc., who is on call to perform safety-sensitive functions may be tested at any time they are on call, ready to be dispatched while on-duty (§382.305).

### **TYPES OF TESTS**

Pursuant to regulations promulgated by the Federal Motor Carrier Safety Administration (FMCSA) and the Department of Transportation (DOT), **DIOCESE OF EVANSVILLE** has implemented six circumstances for drug and alcohol tests: (1) pre-employment, (2) reasonable suspicion, (3) random, (4) post-accident, (5) return-to-duty, and (6) follow-up.

### **REFUSAL TO TEST**

Substitution, adulteration, or refusal to submit to the types of drug and alcohol tests employed by **DIOCESE OF EVANSVILLE** will be grounds for refusal to hire employee/applicants and to terminate employment of existing employees. A refusal to test is defined to be conduct that would obstruct the proper administration of a test. A delay in providing a urine or breath sample could be considered a refusal. If an employee cannot provide a sufficient urine specimen or adequate breath sample, a physician of **DIOCESE OF EVANSVILLE's** choice will evaluate him or her.

If the physician cannot find a legitimate medical explanation for the inability to provide a specimen (either urine or breath), it will be considered a refusal to test. In that circumstance, the employee has violated one of the prohibitions of the regulations.

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

1. Fail 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. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a) of this title);
2. Fail 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 (see §40.63(c) of this title) a pre-employment test is not deemed to have refused to test;
3. Fail 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 (see §40.63(c) of this title) for a pre-employment test is not deemed to have refused to test;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the employee's provision of a specimen (see §40.67(l) and §40.69(g) of this title);
5. Fail 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 (see §40.193(d)(2) of this title);
6. Fail or declines to take a second test the employer or collector has directed the employee to take;
7. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d) of this title. 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;
8. Fail 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);
9. Is reported by the MRO as having a verified adulterated or substituted test result.

### **CONSEQUENCES OF POLICY VIOLATION**

Any employee who becomes unqualified or engages in prohibited conduct as set forth herein may be subject to termination of employment.

### **PRE-EMPLOYMENT TESTING**

Before an employee performs any safety-sensitive functions for an employer, the employee must submit to testing for drugs. The employer must receive a negative result from the medical review officer (MRO) prior to allowing the employee to drive or perform other safety-sensitive functions. (Note: The pre-employment regulations are listed in §382.301. However, §382.301(e) suspends pre-employment alcohol testing as of May 1, 1995.)

### **RANDOM TESTING**

**DIOCESE OF EVANSVILLE** conducts random drug/alcohol testing. **DIOCESE OF EVANSVILLE** or its agents will submit all mandated employees to a computerized random selection system. The random selection system provides an equal chance for each employee to be selected each time random selection occurs. Random selections will be reasonably spread throughout the year. **DIOCESE OF EVANSVILLE** will drug test at no less than the requirements of the FMCSA, however may choose to test at a higher rate, the average number of safety sensitive/mandated positions per calendar year. **DIOCESE OF EVANSVILLE** will select at a minimum 10 percent of the average number of safety sensitive/mandated positions for random alcohol testing. Random selection by its very nature may result in employees being selected in successive selections or more than once a calendar year. Alternatively, some employees may not be selected in a calendar year.

If an employee is selected at random for either drug or alcohol testing, a **DIOCESE OF EVANSVILLE** official will notify the employee. Once notified, every action the employee takes must lead to a collection. If the employee engages in conduct that does not lead to a collection as soon as possible after notification, such conduct may be considered a refusal to test.

### **POST-ACCIDENT TESTING**

Both drug and alcohol testing is performed following any accident involving a fatality; or any accident in which the employee receives a citation under state or local law for a moving traffic violation arising from the accident. (An accident is defined as an incident involving a vehicle in which there is a fatality, an injury treated away from the scene, or where a vehicle is towed from the scene.) After any accident, the employee must contact the employer as soon as possible.

The FMCSA/DOT requires that any time a post-accident drug or alcohol test is required, that it be performed as soon as possible following the accident. If no alcohol collection can be made within eight (8) hours, attempts to collect a breath sample shall cease. If no urine collection can be obtained for purposes of post-accident drug testing within thirty-two (32) hours, attempts to make such a collection shall cease. All attempts shall be documented.

In the event that federal, state, or local officials conduct breath or blood tests for the use of alcohol and/or urine tests for the use of controlled substances following an accident, these tests shall be considered to meet the requirements of this section, provided the tests conform to an applicable federal, state, or local requirements. The employee will sign a release allowing **DIOCESE OF EVANSVILLE** to obtain the test results from federal, state, or local officials.

In the event an employee is so seriously injured that the employee cannot provide a urine specimen or breath sample at the time of the accident, the employee must provide necessary authorization for **DIOCESE OF EVANSVILLE** to obtain hospital records or other documents that would indicate whether there were controlled substances or alcohol in the employee's system at the time of the accident.

### **REASONABLE SUSPICION TESTING**

A covered employee must be tested for alcohol misuse when **DIOCESE OF EVANSVILLE** has reasonable suspicion to believe that the employee has violated the rules regarding use of alcohol. A determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion testing is authorized only if the required observations are made during, just preceding or just after the period of the workday that the covered employee is performing a safety-sensitive function. A supervisor trained in detecting the symptoms of alcohol misuse must make the observation and determination that a reasonable suspicion exists; however, the supervisor making the determination is not to conduct the reasonable suspicion test on that employee (§382.603). A written record of the observations leading to a controlled substance reasonable suspicion test must be made and signed by the supervisor who made the observations. This record must be made within 24 hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier.

### **RETURN-TO-DUTY**

This testing is required for employees who want to return to work after being unqualified for a safety-sensitive function. The return-to-duty testing can be done once the referral/evaluation has been completed. All return-to-duty testing must be observed by a collector of the same sex except when performed by physicians or nurses (§40.67(b)), and requires a negative result prior to the employee returning to a safety-sensitive function.

## **FOLLOW-UP**

Follow-up testing is required after rehabilitation for a drug or alcohol misuse problem and a return-to-duty test. Six unannounced follow-up tests are required within one year of evaluation and treatment by a Substance Abuse Professional (SAP). All follow-up testing must be observed by a collector of the same sex except when performed by physicians or nurses (§40.67(b)).

## **WHAT ARE THE CONSEQUENCES OF A POSITIVE DRUG TEST?**

A driver must be removed from safety-sensitive duty if he/she has a positive drug test result. The removal CANNOT take place until the MRO has interviewed the driver and determined that the positive drug test resulted from unauthorized use of a controlled substance. A driver cannot be returned to safety-sensitive duties 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.

## **PROHIBITED CONDUCT**

The following shall be considered "prohibited conduct" for purposes of this policy:

1. No employee shall report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.
2. No employee shall be on duty or operate a commercial motor vehicle while in possession of alcohol unless the alcohol is transported and manifested as part of a shipment.
3. No employee shall use alcohol while performing safety-sensitive functions.
4. No employee shall perform safety-sensitive functions within eight (8) hours after using alcohol.
5. No employee required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
6. No employee shall refuse to submit to a post-accident, a random, a reasonable suspicion, return-to-duty, follow-up, or post-injury breath-alcohol or urine drug test.
7. No employee shall report for duty or remain on duty when the employee uses any controlled substance, except when use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to operate a commercial motor vehicle or perform a safety sensitive function.

If DIOCESE OF EVANSVILLE. has actual knowledge or has reason to believe that a employee has engaged in prohibited conduct DIOCESE OF EVANSVILLE. may require the employee to submit to drug and/or alcohol testing. If an employee engages in prohibited conduct, the employee is not qualified to drive a commercial motor vehicle or to perform a safety sensitive function and shall be immediately removed from service. DIOCESE OF EVANSVILLE. may in its discretion and at the request of the employee, keep the employee's position open while such employee attempts to become re-qualified. At its discretion, DIOCESE OF EVANSVILLE. may also take action against the employee up to and including termination.

## **SUBSTANCE ABUSE EVALUATION**

Any employee who engages in prohibited conduct shall be provided with names, addresses, and telephone numbers of qualified substance abuse professionals. If the employee desires to become re-qualified, the employee must be evaluated by a Substance Abuse Professional (SAP) and submit to any

treatment prescribed by the SAP. Following evaluation and treatment, if any, in order to become re-qualified the employee must submit to and successfully complete a return-to-duty drug and/or alcohol test. Such an employee is also subject to follow-up testing. Follow-up testing is separate from and in addition to **DIOCESE OF EVANSVILLE'S** reasonable suspicion, post-accident, and random testing procedures. Follow-up testing shall be on a random basis and be in accordance with the instructions of the Substance Abuse Professional. Follow-up testing may continue for a period of up to 60 months following the employee's return to duty. No fewer than six (6) tests shall be performed in the first twelve (12) months of follow-up testing. The costs of any SAP evaluation or prescribed treatment shall be borne by the employee. **DIOCESE OF EVANSVILLE.** does not guarantee or promise a position to the employee should he/she regain qualified status.

### **AUTHORIZATION FOR PREVIOUS TEST RECORDS**

Within 30 days of performing a safety-sensitive function, federal regulations require that **DIOCESE OF EVANSVILLE.** obtain certain drug and alcohol testing records from employee's previous employers for the previous 3 years of employment. (Other forms: work record 3 years, DMV and Hazmat 7 years, drug and alcohol authorization form for past employers, 2 years.)

As a condition to employment, the employee shall provide **DIOCESE OF EVANSVILLE.** with a written authorization for all previous employers within the three years to release such drug and alcohol testing records as are required under federal regulation.

### **DRUG URINALYSIS**

Drug testing will be performed through urinalysis. Urinalysis will test for the presence of drugs and/or metabolites that adhere to the drugs listed in 49 CFR Part 40.

The urinalysis procedure starts with the collection of a urine specimen. Urine specimens will be submitted to a SAMHSA-certified laboratory for testing. As part of the collection process, the specimen provided will be split into two vials: a primary vial and a secondary vial. The SAMHSA certified laboratory will perform initial screenings on all primary vials. In the event that the primary specimen tests positive, a confirmation test of that specimen will be performed before being reported by the laboratory to the MRO as a positive.

### **WHO REVIEWS AND INTERPRETS THE LABORATORY RESULTS?**

All laboratory results will be reported by the laboratory to a Medical Review Officer (MRO) who is designated by **DIOCESE OF EVANSVILLE.** Negative test results shall be reported by the MRO to **DIOCESE OF EVANSVILLE.** . Before reporting a positive test result to **DIOCESE OF EVANSVILLE**the MRO will attempt to contact the employee (in person or by phone) to conduct 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. If the MRO is unable to contact the employee directly, the MRO will contact a **DIOCESE OF EVANSVILLE**management official designated in advance by **DIOCESE OF EVANSVILLE**who shall in turn contact the employee and direct the employee to contact the MRO. Upon being so directed, the employee shall contact the MRO immediately or, if after the MRO's business hours and the MRO is unavailable, at the start of the MRO's next business day. In the MRO's sole discretion, a determination will be made as to whether a result is positive or negative.

Pursuant to FMCSA/DOT regulations, individual test results for applicants and employees will be released to **DIOCESE OF EVANSVILLE** and will be kept strictly confidential unless consent for the release of the test results has been obtained. Any individual who has submitted to drug testing in compliance with this policy is entitled to receive the results of such testing upon timely written request.

An individual testing positive may make a request of the MRO to have the secondary vial tested. A SAMHSA certified laboratory will test the secondary vial different from the one that tested the primary specimen. The individual making the request for a test of the second specimen must pre-pay all costs associated with the test. The request for testing of a second specimen must be made to the MRO within 72 hours of the individual being notified by the MRO of a positive test result.

### **ALCOHOL TESTS**

**DIOCESE OF EVANSVILLE.** will perform alcohol tests using an evidential breath-testing device. **DIOCESE OF EVANSVILLE.** may provide use of an evidential breath-testing device through a vendor or agent. The employee shall report to the site of an evidential breath-testing device as notified by **DIOCESE OF EVANSVILLE.** A breath alcohol technician will operate the evidential breath-testing device. The employee shall follow all instructions given by the breath alcohol technician.

### **WHAT ARE THE CONSEQUENCES OF ALCOHOL MISUSE?**

In the event that an employee has a blood alcohol content of 0.02 to 0.0399 on the basis of the evidential breath, the employee shall be removed from duty for 24 hours or until his/her next scheduled on-duty time, whichever is longer. Employees are not medically qualified until after the 24-hour time frame expires. Employees with tests indicating a blood alcohol concentration of 0.04 or greater are considered to have prohibited conduct which may result in disciplinary action up to and including termination. All alcohol tests shall be performed just prior to, during, or just after duty.

### **WHAT ALCOHOL USE IS PROHIBITED?**

Alcohol is a legal substance; therefore, the rules define specific prohibited alcohol-related conduct. Performance of safety-sensitive functions is prohibited:

- While using alcohol
- While having a breath alcohol concentration of 0.04 percent or greater as indicated by an alcohol breath test
- Within four (4) hours of using alcohol. For Bus Drivers or HAZMAT carriers within eight (8) hours of using alcohol.
- In addition, refusing to submit to an alcohol test or using alcohol within eight (8) hours after an accident or until tested (for drivers required to be tested) are prohibited.

### **WHAT ALCOHOL TESTS ARE REQUIRED?**

The following tests are required based upon the circumstance:

- **POST ACCIDENT** – conducted after accidents on drivers whose performance could have contributed to the accident (as determined by a citation for a moving violation) and for all fatal accidents even if the driver is not cited for a moving violation
- **REASONABLE SUSPICION** – conducted when a trained supervisor or company official observes behavior or appearance that is characteristic of alcohol misuse
- **RANDOM** – conducted on a random unannounced basis just before, during or just after performance of safety-sensitive functions
- **RETURN-TO-DUTY and FOLLOW-UP** – conducted when an individual who has violated the prohibited alcohol conduct standards returns to performing safety-sensitive duties. Follow-up tests are unannounced. 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.

### **TRAINING**

#### **For Designated Employer Representative (DER) and Supervisors:**

**DIOCESE OF EVANSVILLE** shall ensure that Supervisors who are designated to determine whether reasonable suspicion exists to require an alcohol test must receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Supervisors who are designated to determine whether reasonable suspicion exists to require a controlled substance test must receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable use of controlled substances under §382.307.

#### **For Employees:**

**DIOCESE OF EVANSVILLE** shall provide educational materials that explain the requirements of §382.601, consequences of violating the regulations, materials that explain the harmful effects of alcohol and drug abuse, and the employer's policies and procedures with the respect to meeting these requirements. The materials supplied to employees may include information on additional employer policies with respect to the use or possession of alcohol or controlled substances, for example, the consequences for an employee found to have a specified alcohol or controlled substances level based on the employer's authority independent of §382.601. **DIOCESE OF EVANSVILLE shall ensure that each employee sign a required statement certifying that he/she has received a copy of these materials described in §382.601. (See the "Driver Education Packet" for information and signature page.)**

This policy is not intended, nor should it be construed, as a contract between **DIOCESE OF EVANSVILLE** and the employee. This policy may be changed at any time at the sole discretion of **DIOCESE OF EVANSVILLE**.

#### **FMCSA Clearinghouse Mandate, Jan 6, 2020:**

The Clearinghouse is an electronic database containing records of violations of CDL drivers in regards to the regulated drug and alcohol program in Part 382. Any violation for positive drug or alcohol test results, including refusals will be entered into the Clearinghouse database and recorded based off the driver's Commercial Driver License #, name, and date of birth. SSNs will NOT be used in the Clearinghouse. The Clearinghouse regulations require employers, like <Diocese of Evansville>, to both query and report information regarding CDL drivers. Motor carrier employers must report these things:

Alcohol confirmation test result with an alcohol concentration of 0.04 or greater.

Alcohol refusal to test as specified in 49 CFR 40.261.

Drug refusal to test not requiring a determination by the MRO as specified in 49 CFR 40.191.

Negative return-to-work test result.

Completion of follow-up testing.

Actual knowledge as defined in 49 CFR 382.107.

There are two types of queries. First, a **limited query** checks for the presence of information in the queried driver's Clearinghouse record, and the driver's written consent is obtained outside the Clearinghouse through the *General Consent for Limited Queries of the FMCSA Drug and Alcohol Clearinghouse* form. A **full query** discloses to employers and designated C/TPAs detailed information about any resolved or unresolved violations in a driver's Clearinghouse record. **Full queries are used for ALL prospective pre-**

**employment new hires and for currently employed CDL drivers that have a limited query that returns a result recorded in the Clearinghouse.** However, full query consent must be given ONLY through the FMCSA Clearinghouse website within 24 hours. The Clearinghouse will email the driver and the driver must login to the Clearinghouse site and give full consent within 24 hours or the employer must remove that driver from safety-sensitive functions immediately. **Therefore, the bottom line is that a driver who will not consent to a query cannot drive until consent is given and the query is conducted.**

Employers will be required to report Clearinghouse specified violations of the DOT drug and alcohol testing program incurred by their current or prospective CDL drivers; in addition, all employers of CDL drivers must conduct pre-employment full queries to determine whether the prospective new hire has unresolved drug and alcohol violations that prohibit them from performing safety-sensitive functions. Employers will also be required to run a limited query through the Clearinghouse annually to determine whether any current CDL employees have incurred drug and alcohol violations while working for another employer while also working for you. Any violations reported in the Clearinghouse on behalf of a driver will remain for 5 years from the date of violation determination or until the driver completes the return-to-duty process, whichever is later.