

SECTION 8.1
ALCOHOL AND DRUG TESTING POLICY
FOR EMPLOYEES SUBJECT TO THE
DEPARTMENT OF TRANSPORTATION REGULATIONS

A. Statement of Purpose

Employees and the public have a basic right to have their workplaces and highways free of drugs and alcohol (intoxicants) and their effects, and to be able to rely on the fact that co-workers and drivers are not impaired by drugs and alcohol (intoxicants). In the interest of maintaining a safe workplace and highways that are free of drug and alcohol (intoxicant) abuse, Jefferson County is committed to strictly enforcing its policies relative to the use of drugs and alcohol. Participation in the employer's controlled substances and alcohol testing program is a requirement of each driver/employee, and therefore, is a condition of employment or use. Said policies comply with the requirements of the Drug Free Workplace Act of 1988, Federal Motor Carrier Safety Regulations (FMCSR) and the Department of Transportation (DOT) 49 CFR Part 382, and 49 CFR Part 40.

Jefferson County has designated the Human Resources Director, 1225 Pearl, Suite 201, Beaumont, Texas, (409) 839-2391, to answer any questions regarding 49 CFR, Part 382, 49 CFR Part 40, and this policy.

It is the policy of Jefferson County to comply with the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) Clearinghouse, a secure online database that provides employers with real-time information about CDL driver drug and alcohol program violations. Jefferson County will conduct both electronic queries and traditional manual queries with previous employers as required by FMCSA's drug and alcohol use testing program, for checking CDL driver violation histories. Drivers may view their own records. Employees who are CDL holders will be required to provide consent to conduct both Limited and Specific inquiries.

B. Applicability

All Jefferson County employees who are required to have a commercial drivers license (CDL) are subject to the controlled substance and alcohol testing rules. A CDL is required for drivers operating a vehicle that meets the requirements of the Texas Department of Public Safety, i.e., commercial motor vehicles, vehicles designed to carry 16 passengers, including the driver, or of any size, which are used in the transportation of a placardable amount of hazardous material. An Elected Official or Department Head who employs workers in safety-sensitive positions not requiring a CDL may also require persons in those positions to be subject to the provisions of this policy as long as all persons in the same job classification are treated in the same manner. A safety-sensitive position is defined as a position involving job duties when if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real or imminent threat to the personal health and safety of the employee, co-workers, or the public. On duty time includes any of those on-duty functions set forth in **49 CFR 395.2 ON-DUTY TIME**, all time waiting to be dispatched, unless the driver has been relieved from duty; all time inspecting equipment, servicing, or conditioning any commercial motor vehicle (CMV) at any time; all time spent at the driving controls of a

CMV; all time other than driving time, spent on or in a CMV; 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; all time spent performing the driver requirements associated with an accident; all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

C. Prohibited Alcohol and Controlled Substance-Related Conduct

The following are activities prohibited and/or behavior that constitute a refusal to submit to a test:

1. Reporting for duty or remaining on duty to perform safety sensitive functions while having an alcohol concentration of 0.02 or greater.
2. Being on duty or operating a commercial motor vehicle (CMV) while possessing alcohol.
3. Using alcohol while performing safety-sensitive functions or performing safety sensitive functions within four (4) hours after using alcohol.
4. When required to take a post-accident alcohol test, using alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
5. Refusing to submit to, or otherwise interfering with, an alcohol or controlled substance test required by post-accident, random, reasonable suspicion, or follow-up testing requirements.
6. Reporting for duty or remaining on duty for the purpose of performing a safety-sensitive function, when the employee is using or has used any controlled substance except when a physician has advised the employee that the substance does not adversely affect his ability to safely perform a safety-sensitive function.
7. Reporting for duty, remaining on duty, or performing a safety-sensitive function if the driver tests positive for controlled substances.
8. Being on duty or performing a safety-sensitive function when the employee's general appearance or conduct or some other substantiating evidence indicates he has used alcohol within the preceding four (4) hours.
9. Tampering with or attempting to adulterate the specimen.
10. Not immediately reporting to the collection site.
11. Failing to remain at the collection site until the collection process is complete.
12. Inability to provide sufficient quantities of breath, saliva, or urine to be tested without a valid medical explanation.
13. Having a test result reported by an MRO as adulterated or substituted.
14. Leaving the scene of an accident without a valid reason before the tests have been conducted.

D. Consequences to Employee

Employees who are known to have engaged in prohibited behavior with regard to alcohol misuse or use of a controlled substance are subject to the following consequences:

1. Employees shall not be permitted to perform safety-sensitive functions under the following conditions:

- a. When an employee is tested the first time and his blood alcohol level is 0.02 to 0.039, he shall be relieved from duty for three (3) days or 24 hours without pay.
 - b. An employee with a previous test showing alcohol use that is tested a second time and found to have a blood alcohol level of 0.02 or greater will be subject to termination.
 - c. Employees who refuse a test shall be considered to have received a positive result and are subject to termination.
 - d. Employees who test 0.04 or greater on the first test shall be referred to a Substance Abuse Professional (SAP) for evaluation and shall be subject to indefinite suspension and/or termination. The employee will be considered as needing assistance in resolving problems associated with alcohol, and will be subject to at least six follow-up tests in the following twelve months, or as directed by the SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. An employee's refusal to visit a SAP or follow his treatment plan shall result in termination.
 - e. Employees tested after being referred to a SAP and showing a blood alcohol level of 0.02 or greater shall be subject to termination.
 - f. Employees who test positive for a controlled substance shall be subject to indefinite suspension and/or termination.
2. Employees shall be advised by Jefferson County of the resources available to them in evaluating and resolving problems associated with the misuse of alcohol or use of controlled substances. Jefferson County contracts with an Employee Assistance Program to assist employees with such issues.
 3. Before a driver returns to duty in a safety-sensitive function, he/she shall undergo a return-to-duty alcohol test at his/her own expense with a result indicating a breath alcohol level of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved controlled substances.

E. Types of Testing

In order to enhance highway safety, Jefferson County will follow the Omnibus Transportation Employee Testing Act of 1991 requiring employees holding a CDL to be tested for the use of controlled substances and misuse of alcohol. The following are the types of tests required to be administered.

1. Post-offer, Pre-employment Testing – all Jefferson County employees are required to submit to a post-offer pre-employment drug test and must have received a negative

result prior to reporting to work. The Human Resources Department will make arrangements for the required test.

2. Random Testing – random testing shall be administered at an annual rate of 25 percent of the average number of CDL employees. Jefferson County shall ensure that the random alcohol testing will be unannounced and spread reasonably throughout the calendar year. Employees shall be tested for alcohol while they are performing safety-sensitive functions, immediately prior to performing, or immediately after performing safety-sensitive functions. In the event an employee who is selected for a random alcohol test is on vacation or an extended medical absence, Jefferson County can either select another employee for testing or keep the original selection confidential until the employee returns.

Random testing for controlled substances shall be administered to 50 percent of the average number of CDL employees. The testing shall be unannounced and spread reasonably throughout the calendar year. Each employee selected for random controlled substances testing shall proceed immediately to the testing site upon notification of being selected. In the event the employee selected for a random controlled substances test is on vacation or an extended medical absence, Jefferson County can either select another employee for testing or keep the original selection confidential until the employee returns.

3. Reasonable Suspicion Testing – shall be administered to employees when Jefferson County has reason to believe the employee has violated the alcohol or controlled substances prohibitions.

“Reasonable Suspicion” – Belief that the driver has violated the alcohol and controlled substances prohibition based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.

4. Post-Accident Testing – shall be conducted as soon as practicable following an accident. Jefferson County shall test for alcohol and controlled substances on each surviving employee when:
 - a. The accident involved a fatality or an injury treated away from the scene.
 - b. The employee received a citation under state or local law for a moving traffic violation.
 - c. The supervisor or other responsible management authority has reasonable suspicion or cause to believe that the employee may be under the influence of alcohol and/or a controlled substance.
 - d. The accident results in damage to county property or equipment.

For the purposes of this policy, an accident is defined as “an incident involving a vehicle in which there is either a fatality, an injury treated away from the scene, a damaged vehicle or damaged property/equipment.” The employee subject to post-

accident testing must refrain from consuming alcohol for eight hours following the

accident or until he/she submits to an alcohol test, whichever comes first. The employee must remain available for testing, and if he is not, his lack of availability will be considered as a refusal to take the test.

When an alcohol or controlled substance test has not been administered within a reasonable time frame following the accident, the following actions shall be taken:

- a. If the employee has not submitted to an alcohol test within two hours, Jefferson County shall prepare and maintain on file a record stating the reason a test was not promptly administered.
- b. If the employee has not submitted to an alcohol test after eight hours, attempts to administer an alcohol test shall cease, and documentation shall be prepared and maintained as described above.
- c. If the employee has not submitted to a controlled substance test within 32 hours, Jefferson County shall cease attempts to administer the test and shall prepare and maintain the record as described above.

Note: Nothing should be construed so as 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.

Jefferson County employees shall be provided with necessary post-accident information, procedures, and instruction prior to performing a safety-sensitive function, so that the employee will be able to comply with the requirements of this policy.

5. Return-to-Duty Testing and Follow-up Testing

Jefferson County shall ensure that before an employee who has engaged in prohibited conduct regarding alcohol misuse returns to duty in a position requiring the performance of a safety-sensitive function, the employee will undergo a return-to-duty alcohol test at his/her own expense indicating a breath alcohol concentration of less than 0.02 if the conduct involved alcohol. If the prohibited conduct involved a controlled substance, the employee will undergo a return-to-duty controlled substance test at his/her own expense indicating a verified negative result. Employees who test positive for controlled substances may be subject to immediate termination of employment.

Following a determination that an employee is in need of assistance of resolving problems associated with alcohol and/or controlled substance misuse, Jefferson County shall ensure that the employee is subject to unannounced follow-up alcohol and/or controlled substances testing (at the employee's expense) as directed by the substance abuse professional. The employee shall be subject to a minimum of six follow-up controlled substance and/or alcohol tests in the following twelve months.

Note: This policy is to be administered in conjunction with Jefferson County Drug and Alcohol Policy for all other employees (not classified as CDL Drivers).