

DOT Drug and Alcohol Testing

1046.1 PURPOSE AND SCOPE

The Fresno County Fire Protection District is committed to maintaining a safe and healthy work environment for its members. This policy sets forth guidelines and procedures for drug and alcohol testing in accordance with federal regulations

1046.1.1 DEFINITIONS

Definitions related to this policy include:

Controlled substance or drug - Those substances listed the Controlled Substances Act (21 USC § 812), except that lawful possession or use of medications prescribed by the member's licensed physician shall be excluded.

Legally prescribed drug - A prescription or other written approval for the use of a drug as medical treatment. The prescription or written approval should include the patient's name, the name of the drug, the amount to be taken and the period of approval.

1046.2 POLICY

The misuse of and/or dependency on drugs and/or alcohol by members of this district is a threat to public welfare and to the safety of all members. The use, possession or being under the influence of alcohol or unauthorized drugs by members while on-duty or while conducting any official business will not be tolerated. It is the policy of the Fresno County Fire Protection District to prevent the use of drugs and alcohol in the workplace through testing and education, and to comply with the United States Department of Transportation Federal Highway Administration (U.S. DOT-FHWA) regulations on Controlled Substances and Alcohol Use Testing (49 CFR 382 et seq.; 49 CFR 40 et seq.).

1046.3 DESIGNATED EMPLOYER REPRESENTATIVE (DER)

The Fire Chief will appoint a Designated Employer Representative (DER) who will be responsible for developing and maintaining a drug and alcohol testing and education plan (49 CFR 40.3). The DER is responsible for receiving communications and test results from service agents and is authorized to take immediate action to remove members from safety-sensitive duties. The DER is also authorized to make required decisions in testing and evaluation processes.

1046.4 APPLICABILITY

This policy applies to all safety-sensitive members as defined by DOT regulations and includes paid part-time members, volunteers, contract employees and contractors who operate, as part of their job requirement or while conducting business on behalf of the District, any commercial vehicle of a type requiring a state-issued commercial driver's license. Any District members who possess a California Driver License Class B restricted license are not subject to the requirements of this policy, unless they are required by the District to possess a California Class A or Class B (non-restricted) Driver License.

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1046.5 REQUIRED TESTING

The following circumstances identify when a member shall be subject to drug or alcohol testing (49 CFR 382 et seq.).

1046.5.1 PRE-EMPLOYMENT TESTING

New members hired or current members who are assigned to perform duties affected by this policy shall submit to a pre-employment drug test. The District must receive a negative test result prior to the performance of any duties assigned.

1046.5.2 POST-COLLISION TESTING

- (a) As soon as practicable following a collision involving a driver covered by this policy, the driver shall be tested for alcohol and/or controlled substances if any of the following conditions exist:
 - 1. The collision involved the loss of human life.
 - 2. The driver was cited for a moving violation, under state or local law, within eight hours of the occurrence of the collision.
- (b) If the driver was cited within 32 hours of the collision, under state or local law, for a moving violation arising from the collision, he/she shall be tested for controlled substances, if the incident involved:
 - 1. Bodily injury to any person who, as a result of the injury, immediately received medical treatment away from the scene of the collision.
 - 2. One or more motor vehicles incurred disabling damage as a result of the collision, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

1046.5.3 REASONABLE SUSPICION

Vehicle operators covered by this policy will be required to submit to an alcohol or drug test when the District has reasonable suspicion to believe the driver is under the influence of alcohol or a drug. This determination must be based on specific, contemporaneous and articulable observations of the driver's appearance, behavior, speech or body odor.

The observations may include indications of the chronic and/or withdrawal effects of drugs.

1046.6 RETURN TO DUTY OR FOLLOW-UP TESTING

A covered member who has violated any of the prohibitions of this policy must submit to a return-to-duty test before returning to his/her position (49 CFR 40.305). The test result must indicate an alcohol concentration of less than 0.02 (0.01 in the State of California) or a verified negative result on a controlled substances test. In addition, because studies have shown that the relapse rate is highest during the first year of recovery, the member will be subject to follow-up testing, which is separate from the random testing obligation. The member will be subject to at least six unannounced drug/alcohol tests during the first year back to the safety-sensitive position following the violation.

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1046.7 TRAINING AND EDUCATIONAL MATERIALS

The District shall provide educational materials that explain the requirements of 49 CFR 382 and the associated policies and procedures established to each driver affected by this policy prior to the start of alcohol and controlled substance testing for that driver.

The District shall provide written notice to representatives of the affected member's organization regarding the policy and availability of this information.

The District shall provide at least 60 minutes of training on alcohol misuse. District supervisors will receive at least an additional 60 minutes of training on controlled substance abuse. This training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing and the associated forms for reporting (49 CFR 382.603).

1046.8 SUBSTANCE ABUSE PROFESSIONAL (SAP) EVALUATION

A member who has violated the DOT drug and alcohol regulations cannot again perform any DOT safety-sensitive duties until and unless the member completes the Substance Abuse Professional (SAP) evaluation, referral and education/treatment process. The District will provide to each member who violates the DOT drug and alcohol regulation a listing of approved SAPs (49 CFR 40.287). The member must have a SAP evaluation before returning to duty. The payment of the SAP is determined by the member's current health care benefits or existing collective bargaining agreements (49 CFR 40.287; 49 CFR 40.289).

The SAP evaluation must include (49 CFR 40.293):

- (a) A comprehensive face-to-face assessment and clinical evaluation.
- (b) A recommended course of education and/or treatment with which the member must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
 1. Appropriate education may include, but is not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.
 2. Appropriate treatment may include, but is not limited to, inpatient hospitalization, partial inpatient treatment, outpatient counseling programs and aftercare.
- (c) A written report directly to the DER highlighting specific recommendations for assistance.
- (d) Consultation with the medical review officer if the SAP determines it is necessary or prudent to do so as part of the evaluation

1046.9 PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following (49 CFR 382):

- (a) Any illegal drug or any substance identified in Section 202 of the Controlled Substance Act (21 USC § 812) and defined by 21 CFR 1300.01. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), cocaine and any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.

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- (b) The use of beverages, medication or other substances (e.g., mouthwash, food, candy) containing alcohol such that alcohol is present in the body while performing work-related duties. The concentration of alcohol is measured by an evidentiary breath-testing device.
- (c) The illegal use of legal drugs while performing work-related duties (e.g., misuse of legally prescribed drugs and the use of illegally obtained prescription drugs).

The use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance that carries a warning label that indicates that mental functioning, motor skills or judgment may be adversely affected must be reported immediately to an appropriate supervisor.

Written approval from a qualified health care professional must be provided to the District before the affected member may perform any work-related duties while taking these medications.

1046.10 PROHIBITED CONDUCT

1046.10.1 MANUFACTURE, TRACKING, POSSESSION AND USE

District members affected by this policy are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of prohibited substances while on-duty. Members who violate this prohibited conduct will be subject to disciplinary action, up to and including termination. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

1046.10.2 INTOXICATION OR UNDER THE INFLUENCE

District members affected by this policy who are reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance or not fit for duty shall be suspended from job duties pending an investigation and verification of their condition. Members found to be under the influence of prohibited substances or who fail to pass a drug or alcohol test shall be removed from duty and subject to disciplinary action, up to and including termination. A drug or alcohol test is considered positive if the member is found to have a quantifiable presence of a prohibited substance in the body that is above the minimum thresholds defined in 49 CFR Part 40.

1046.10.3 ALCOHOL USE

District members affected by this policy should not report for duty or remain on-duty when their ability to perform assigned duties is adversely affected by alcohol or when the breath alcohol concentration is 0.04 or greater. No member affected by this policy shall use alcohol while on-duty, in uniform or while performing job duties. No member shall perform safety-sensitive functions within four hours of using alcohol. The District, having knowledge that a driver has used alcohol within four hours, shall not permit the driver to perform or continue to perform safety-sensitive functions. Violations of these provisions are prohibited and subject to disciplinary action up to and including termination.

1046.10.4 COMPLIANCE WITH TESTING REQUIREMENTS

All members affected by this policy will be subject to urine drug testing and breath alcohol testing.

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Any member who refuses to comply with a request for testing shall be removed from duty and subject to disciplinary action, up to and including termination.

In addition, any member who is suspected of providing false information in connection with the test or who is suspected of falsifying test results through tampering, contamination, adulteration or substitution will be required to undergo an observed collection of a urine specimen. Verification of these actions will result in the member's removal from duty and possible disciplinary action, up to and including termination.

Refusal can include an inability to provide a sufficient urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior or physical absence that results in the member's inability to take the test.

1046.11 TESTING GUIDELINES

The following represent a summary of testing guidelines. For specific testing procedures and required forms, see the Alcohol and Drug Use Policy.

1046.11.1 TESTING REQUIREMENTS

Requirements shall include tests for alcohol and controlled substances:

- (a) A National Highway Traffic Safety Administration (NHTSA)-approved evidential breath testing (EBT) device will be used at the .02 and .04 alcohol concentrations.
- (b) For controlled substances, a urine specimen will be collected to test for marijuana, cocaine, amphetamines, PCP, opiates and prescription drugs that may affect a member's ability to perform job duties safely.

The District shall only use testing facilities that adhere to the DOT requirements regarding testing for specified prescription drugs.

1046.11.2 TESTING NOTIFICATION AND MEMBER RESPONSIBILITIES

The DER will notify the appropriate supervisor regarding the member who is to be tested. If testing is required post-collision or is due to reasonable suspicion, the member's supervisor shall transport the member to the testing site.

If testing is for any other reason, the selected member is required to proceed to the testing site immediately upon notification. Except as noted above the member may use a vehicle owned by the District to go to the testing site if one is reasonably available.

If the results of a test could reasonably lead to disciplinary action, the member may have union representation at the testing site. However, the testing will not be unreasonably delayed to accommodate the request

1046.11.3 TEST RESULTS

All controlled substance tests will be reviewed by a licensed physician who has been designated as the medical review officer and is responsible for receiving laboratory results (49 CFR 40.121). The medical review officer receives all test results from the district's DOT drug-testing program

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and evaluates medical explanations for certain drug test results. Positive tests are reviewed by the medical review officer and the member prior to submitting the test results to the district's DER.

1046.12 CONFIDENTIALITY AND RELEASE OF INFORMATION

The District recognizes the privacy due to members and, except as otherwise provided in 49 CFR 40.321 or pursuant to a written agreement or other lawful process, shall not release individual test results or medical information about a member to third parties without the member's written consent.

1046.13 RECORDS RETENTION

The following records will be maintained by the District for a minimum of five years and thereafter purged or destroyed in accordance with established records retention procedures (49 CFR 40.333):

- Records of a member's alcohol test results indicating an alcohol concentration of 0.02 or greater
- Records of any verified positive drug test result
- Documentation of refusals to take required alcohol and/or drug tests
- SAP reports
- All schedules for follow-up tests and the results

Information legally obtained from previous employers pursuant to 49 CFR 40.25 concerning a member's drug and alcohol test results will be retained for a minimum of three years and thereafter purged or destroyed in accordance with established records retention procedures (49 CFR 40.333).

Records of canceled drug tests, negative drug test results and alcohol test results with a concentration of less than 0.02 will be retained for a minimum of one year and thereafter purged or destroyed in accordance with established records retention procedures (49 CFR 40.333).