

PSATS CDL Program Guidance

Positive CDL Employee Procedure

Employers shall use the following federally required procedure when a CDL employee: (1) tests positive for a CDL drug or alcohol test; or (2) fails to appear in a timely fashion to take a required CDL drug or alcohol test or fails to provide a sufficient sample, both of which are classified as a positive test result.

For members of the PSATS CDL Program, all positive test results of CDL employees will automatically be reported to the FMCSA Drug and Alcohol Clearinghouse and thus will be made available to future employers. It is therefore imperative that positive-tested CDL employees, whether they remain employed by their current employer or not, successfully complete the requirements imposed on them by 49 CFR 40 Subchapter "O" if they want to continue future employment as a CDL driver.

Step One – Consult Your CDL Drug and Alcohol Testing Personnel Policy

Upon notice that a CDL employee had a positive drug or alcohol test result, consult your CDL Drug and Alcohol Testing personnel policy.

Terminating Employment: If your policy calls for terminating an employee following a positive drug or alcohol test result, the employer must: (1) notify the PSATS CDL Program by email to cdl@psats.org to remove the employee from your roster; (2) inform the employee that they will need, at the employee's own expense, to obtain counseling from, and complete additional testing as required by, a certified Substance Abuse Professional, or SAP (Note: the employee can call American Substance Abuse Professionals at (888) 792-2727 for assistance in locating an appropriate counselor and identifying the selected counselor in the Clearinghouse); and, (3) inform the employee that they can obtain additional information regarding substance abuse education by contacting their home county's office of drug policy or department of health.

IMPORTANT - If your personnel policy allows the employee to remain employed, and the employee wants to continue work for you in a CDL capacity, then Steps Two through Five must each be completed before the employee can resume CDL employment.

Step Two – Employee Removed from CDL Work

The employer must not allow the employee to perform any "safety-sensitive" work as defined in the federal regulations at 49 CFR Section 382.107 (see below) until completion of Step Four. **If you have any questions about prohibited work (i.e., "safety-sensitive" functions as listed on the reverse), please consult your solicitor.** Townships are further encouraged to adopt a policy that reduces the pay of those CDL employees who have been removed from safety-sensitive work until they have completed the required counseling and obtained a negative return-to-duty test, at which time they can resume safety-sensitive work and be changed back to full-pay status.

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Step Three – Employee Selects Substance Abuse Professional (SAP)

The employer must provide information on where the employee can find substance abuse counseling. The employee can contact their local hospital for assistance in locating a qualified SAP counselor, or they can contact American Substance Abuse Professionals at (888) 792-2727 to arrange for the necessary counseling. Regardless of where the employee obtains the necessary SAP services, the employee should directly verify that the counselor selected is certified as a SAP in accordance with federal regulations at 49 CFR 40.281, and then the employee must then identify their selected counselor in the FMCSA Clearinghouse records. The employer's drug and alcohol testing personnel policy can require that the employee's pay be deducted to pay the invoices of all required return-to-duty and follow-up tests.

Step Four – Employee Takes Return-to-Duty Test

Before returning to CDL work at any employer, the positive-tested driver, in accordance with the requirements at 49 CFR 40 Subchapter "O", must: (1) comply with all the SAP's prescribed education and/or treatment counseling; and (2) then obtain a negative result on an observed return-to-duty test scheduled on a date agreed to in consultation between the SAP and the employer. In addition to complying with these required return-to-duty and follow-up tests, notice that the driver successfully completed the required counseling and return-to-duty test must be reported to the driver's FMCSA Clearinghouse records by the employee's selected Substance Abuse Professional.

Step Five – Resume CDL Employment and Complete Follow-up Testing

After completing **Steps One** through **Four**, the employee may return to full CDL employment. However, the employee remains subject to future random drug or alcohol tests and must continue and complete any and all follow-up tests as required by the counselor. The counselor will provide a written follow-up testing plan for this employee to the employer's contact person (per 49 CFR 40.307(b)). The employer is then responsible for scheduling that employee in accordance with the SAP's follow-up testing plan (per 40 CFR 40.307(d)(3)).

DEFINITION OF SAFETY SENSITIVE FUNCTIONS

Federal regulations at 49 CFR Section 382.107 define safety-sensitive functions as 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:

- (1) 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;
- (2) All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) 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 subchapter);
- (5) 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
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

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