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395, & 49 C.F.R. Part 171, 172  
I.C. 49-301(7)

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## COMMERCIAL DRIVERS (CDL)

### I. INTRODUCTION

This regulation is furnished as a guide to comply with the federal regulations required for commercial drivers' licenses. This regulation applies to all persons who are applying for or who are employed in positions with duties or activities that involve the requirement of a commercial drivers' license (CDL). The requirements contained in this regulation are under the authority of the Department of Transportation.

The Human Resource Department maintains a list of all CDL holders and oversees the drug and alcohol testing for CDL holders. For questions regarding this program contact Human Resources.

### II. WHEN A CDL IS REQUIRED

A commercial driver's license is required for operation of City vehicles that drive on public roads and meet the following commercial motor vehicle definition:

- A. Have a gross combination weight rating of 26,001 or more pounds inclusive of the towed unit with a gross vehicle weight rating of more than 10,000 pounds, DOT1; or
- B. Have a gross vehicle weight rating of 26,001 or more pounds, DOT2; or
- C. Is designed to transport 16 or more passengers, including the driver, DOT3; or
- D. Is of any size and is used in the transportation of materials that are found to be hazardous for purposes of the Hazardous Materials Transportation Act and require the motor vehicle to be placarded under the Hazardous Material Regulations (49 CFR, Part 172, subpart F), DOT4.

There are two exceptions that may apply to the City of Boise:

- A. Drivers of fire fighting or other emergency equipment used in response to emergencies involving the preservation of life or property are exempt from having to possess a commercial driver's license.
- B. Also exempt are operators of a farm vehicle which is:
  - 1. Controlled and operated by a farmer;
  - 2. Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;
  - 3. Not used in the operations of a common or contract motor carrier; and
  - 4. Used within 150 miles of the farmer's farm.

### III. APPLICANT REQUIREMENTS FOR CDL POSITIONS

Any person applying for employment as an operator of a commercial motor vehicle who possess a valid commercial driver's license prior to hire shall provide the following at the time of application for employment:

- A. Employment history information for the 10 years preceding the date of the application.
- B. List of the names and addresses of the applicant's previous employers for which the applicant was an operator of a commercial motor vehicle;
- C. Dates the applicant was employed by these employers; and
- D. Reason for leaving such employment.

All applicants who have been conditionally accepted for employment in positions that involve the duties or activities that require a commercial driver's license (CDL) shall take a post-offer Department of Transportation (DOT) test for illegal drugs. A verified negative test result shall be received before the applicant may begin work. This includes current employees who transfer, promote, demote or are reassigned from a non safety sensitive position into a position requiring a Commercial Driver's License (CDL).

The Idaho Transportation Department will be a central source of information regarding Commercial Driver License's (CDL) and interpreting rules as they pertain to commercial drivers license issues.

### V. LAWS AFFECTING CDL DRIVERS

Commercial driver's license drivers are subject to all laws affecting all drivers. In addition, there are several federal and state laws that affect commercial driver's license drivers. The following are important regulations employees with commercial drivers licenses are responsible for:

- A. An employee cannot have more than one driver's license and that license shall be issued from the State of Idaho.

- B. It is the employee's responsibility to keep a current address on file with the Idaho Transportation Department (ITD).
- C. Effective January 26, 2010, texting while operating a commercial vehicle is prohibited and may be subject to civil or criminal penalties.
- D. A commercial driver's license holder shall notify the Idaho Transportation Department and the City of Boise within 30 days if he or she is convicted in any other state of any traffic violation except parking. This applies no matter what type of vehicle the driver is driving at the time of the infraction.
- E. An employee shall immediately notify the City if his or her license is suspended, revoked, or cancelled, or if he or she is disqualified from driving.
- F. No employee shall drive a commercial vehicle without a valid commercial driver's license.
- G. If an employee's position requires a commercial driver's license and the employee's commercial drivers license is revoked, the employee's employment is subject to termination.
- H. Ongoing medical certification exams are not required for drivers of local government entities who drive commercially only in Idaho.

#### VI. DRUG AND ALCOHOL TESTING REQUIRED FOR COMMERCIAL DRIVERS

The City of Boise is committed to safeguarding the health of employees and providing and supplying our customers with the highest quality service possible. Substance abuse at work or away from work can seriously endanger the safety of employees therefore the City has established a program to detect users and remove abusers of alcohol, drugs, or other controlled substances. The City of Boise is committed to preventing the use and/or presence of these substances in the workplace. The City also provides as an employee benefit an Employee Assistance Program that is designed to help employees deal with substance abuse and other problems that they and their families might encounter.

Omnibus Transportation Employee Testing Act of 1991 and Title 49, Parts 40 as amended and 382, Code of Federal Regulations require the City to conduct alcohol and controlled substances testing for employee's who operate commercial motor vehicles. Any employee whose job duties require a CDL and performs safety sensitive functions as defined in the following section shall be considered as being "covered" under the Department of Transportation's Alcohol and Drug Testing Requirements.

Any person who holds a CDL is considered to have consented to alcohol testing as is required by any State or jurisdiction in the enforcement of §§383.51(b)(2)(i) Consent is implied by driving a commercial motor vehicle. As the employer, the City of Boise, cannot require an employee to sign a consent, release, or waiver of liability with respect to any part of the drug and alcohol testing process § 40.27.

#### VII. TESTING PROCEDURES

Specimen collection, handling, and testing procedures are conducted according to the U.S. Department of Health and Human Services (HHS) guidelines. Covered personnel will be tested for the presence of alcohol, marijuana, cocaine, opiates, phencyclidine, amphetamines, heroin and MDMA (aka Ecstasy).

## A. Alcohol Testing

The rules allow for screening tests to be conducted using saliva devices or breath testing using evidential breath testing (EBT) and non-evidential breath testing devices approved by the National Highway Traffic Safety Administration (NHTSA).

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.

NOTE: The provisions of this regulation do not relieve an employee from requirements pursuant to other City policies on drugs and alcohol. For example, the City's Drug-Free Workplace Policy is more restrictive and prohibits breath alcohol level of .01 or more.

Testing procedures that ensure accuracy, reliability and confidentiality of test results 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.

## B. Drug Testing

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 (HHS). 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 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 HHS certified laboratory for analysis. This split specimen

procedure essentially provides the driver with an opportunity for a second opinion.

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.

All drug test results are reviewed and interpreted by a physician known as a Medical Review Officer (MRO)) before they are reported to the City. 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 City.

Federal law prohibits any unauthorized use of the controlled substances. Illicit use of drugs by drivers is prohibited on or off duty.

Department of Transportation (DOT) required drug and alcohol tests shall be separate from the non-DOT tests that are required by the City's Drug Free Workplace Policy and Regulation. Only tests that are specified as DOT regulated urine or breathe specimen tests comply with DOT regulations. Therefore, when sending an employee for a drug test the City shall clearly designate the test as a DOT test.

#### VIII. COVERED EMPLOYEES COMPLIANCE PERIODS

Compliance period for employees whose job duties require a CDL are while:

- A. Operating a commercial motor vehicle. This includes, but is not limited to full time, regularly employed drivers; casual, intermittent or occasional drivers, and
- B. Performing, is ready to perform, or immediately available to perform, including all time doing any of the following "safety sensitive" functions:
  - 1. Waiting to be dispatched, unless relieved of duty;
  - 2. Performing inspections or servicing the motor vehicle;
  - 3. Driving the motor vehicle;
  - 4. Loading or unloading the vehicle, supervising the loading or unloading, assisting in the loading and unloading, giving receipts for the load, or waiting to operate the motor vehicle just before or after loading or unloading;
  - 5. Performing duties and services at an accident scene;
  - 6. Remaining in readiness to operate the vehicle;
  - 7. Repairing, obtaining assistance for or remaining in attendance by a disabled vehicle;
  - 8. Being physically present anywhere on the motor vehicle except when resting off-duty in the motor vehicle's sleeper berth.

IX. COVERED EMPLOYEE PROHIBITIONS

Commercial motor vehicle drivers are expressly forbidden by federal regulations from the following actions:

- A. Report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.
- B. Using alcohol while performing safety sensitive functions.
- C. Possess or use alcohol while on duty. The possession of medicines containing alcohol (prescription or over-the-counter) is also prohibited unless the packaging seal is unbroken.
- D. Perform safety sensitive functions within four (4) hours after using alcohol.
- E. No supervisor with knowledge that a driver has used alcohol within four (4) hours shall permit a driver to perform or continue to perform safety-sensitive functions.
- F. Consume alcohol when required to take a post-accident alcohol test under Federal Regulations for eight (8) hours following involvement in an accident, or until undergoing the post-accident test, whichever occurs first.
- G. Refuse to submit to an alcohol or controlled substance test required under the regulations.
- H. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, **except** when the use is pursuant to the instructions of a licensed medical practitioner, as defined in §382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle. A supervisor may require a commercial driver to inform him/her of any such therapeutic drug use.
- I. No supervisor having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

NOTE: The provisions of this regulation do not relieve an employee from requirements pursuant to other City policies on drugs and alcohol. For example, the City's Drug-Free Workplace Policy is more restrictive and prohibits breath alcohol level of .01 or more.

X. REFUSAL TO SUBMIT TO REQUIRED TESTS

An employee will be considered to have refused to submit to a required alcohol or controlled substances test when the employee:

- A. Refuses to test; or
- B. Fails to report for a required test at the scheduled time, or
- C. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing, or
- D. Fails to provide adequate urine for controlled substances testing without a valid and written medical explanation from a state licensed physician after he or she has received notice of the requirements for urine testing, or

- E. Engages in conduct that clearly obstructs the testing process.

Covered employees, who refuse to take any required test(s), or who fail to report for a test when scheduled, fail to provide adequate breath or urine for testing, shall be prohibited from performing or continuing to perform safety sensitive functions and shall be subject to disciplinary action up to and including dismissal. In the case of applicants, the conditional offer of employment will be withdrawn.

## XI. TYPES OF TESTS

A DOT alcohol and/or controlled substances test is required for covered employees under the following conditions:

- A. Post Offer: Includes promotions, transfers etc.

Federal regulations require employers to test new drivers for controlled substances prior to allowing the drivers to perform a safety sensitive function for the first time. Employers may, but are not required to, conduct pre-employment alcohol testing. The City shall ensure DOT test procedures are used for pre-employment testing of CDL drivers.

Federal regulations state no employer shall allow a driver to perform a safety-sensitive function unless the result of the breath alcohol test indicates a breath alcohol level of less than 0.04 and has received a controlled substance test from the Medical Review Officer (MRO) indicating a verified negative result.

### Additional Post Offer Employer Obligations

1. The City of Boise must ensure that no prior employer of the driver has records of a violation of controlled substances within the previous 6 months.
2. The federal regulation requires employers conduct background checks of applicants. As a result, an employee is required to give the City written consent to contact his or her former employer(s). If the employee refuses to provide consent, the conditional offer of employment will be withdrawn.
3. In conjunction with the background check, the City must obtain the following information from a prior DOT regulated employer, for the three (3) year period prior to the date of the employee's application:
  - a. Alcohol tests with results higher than 0.04;
  - b. Verified drug test results;
  - c. Refusals to be tested, including adulterated results;
  - d. Other violations of drug and alcohol testing results;
  - e. For any employee who violated a drug and alcohol regulation, documentation of the employee's successful completion of return to duty requirements; and
  - f. Information from prior employers.

4. If possible, this information will be obtained and reviewed prior to an employee performing any safety sensitive duties. If this is not feasible, the City must obtain and review the information as soon as possible. However, supervisors must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless the City has obtained or made and documented a good faith effort to obtain this information. All released information shall be kept confidential. Prior employers receiving such requests must comply. If any violations appear, the City may not employ the employee unless the former employer or employee can document successful completion of the return to duty process.

City employees, who are promoted, demoted or transferred into a position that has job duties that require a CDL and the performance of safety sensitive functions, are considered to be given a conditional offer of employment until a controlled substance test is completed and negative test results are received. Negative test results shall be received before employment is confirmed and the employee is allowed to perform any safety sensitive functions. Employees who test positive will not be allowed to fill the safety-sensitive position.

#### B. Random Test

To ensure that each covered employee has an equal chance of being selected for random testing, a computer generated selection process is used. The annual number of random tests will be determined by the Department of Transportation. Beginning January 1, 2020 the minimum annual percentage rate for random controlled substances testing is 50 percent (50%) of the average number of driver positions. The minimum annual percentage rate for random alcohol testing is ten percent (10%).

All random tests will be unannounced and occur throughout the calendar year. Some drivers may be tested more than once each year; some may not be tested at all depending on the random selection. **An employee shall be tested for alcohol only just before, while performing or just after ceasing to perform safety-sensitive functions.** Employees performing safety-sensitive functions at the time of notification shall cease to perform the safety-sensitive function and proceed to the test as soon as possible. Supervisors are responsible to ensure DOT test procedures are used for random testing of CDL drivers.

#### C. Reasonable Suspicion Test

A supervisor can require an alcohol and/or controlled substances test of a covered employee when the supervisor has reasonable suspicion that the covered employee is alcohol and/or drug impaired while on duty. Evidence that may provide reasonable suspicion include current, specific observations concerning the appearance, behavior, speech or body odors of the DOT regulated employee.

Whenever there is reasonable suspicion that a covered employee is under the influence or using controlled substances or alcohol, then the employee shall

be transported to a collection/test site for an alcohol and/or controlled substances test. The covered employee will not be allowed to perform safety sensitive functions until the results of the test are known.

Supervisors may not compel a DOT test on the mere possession of alcohol. Authorization for DOT alcohol testing shall be made during, just preceding, or just after the period of the workday that includes safety sensitive functions. A written record shall be made of the observations leading to the alcohol test, and signed by the supervisor who made the observations. If an alcohol test is not administered within two (2) hours following the reasonable suspicion determination, the supervisor shall prepare a written record stating the reasons the alcohol test was not promptly administered. If the alcohol test has not been administered within eight (8) hours, the supervisor shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. The record shall be sent to Human Resources to be placed in the employee's CDL file. Copies are not maintained by the supervisor or the Department.

#### D. Post Accident Test

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the City shall test for **alcohol** for each of its surviving drivers:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; OR
2. Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, and if the accident involved:
  - a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - b) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the City shall test for **controlled substances** for each of its surviving driver(s):

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; OR
2. Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, and if the accident involved:
  - a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

- b) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

The driver subject to post-accident testing shall remain available for such testing, or the City may consider the driver to have refused to submit for testing. The driver subject to post-accident testing shall refrain from consuming alcohol for eight (8) hours following the accident, or until he/she submits to an alcohol test, whichever comes first.

The tests shall be administered within the first two (2) hours, whenever possible, and no later than eight (8) hours for alcohol, and not later than thirty-two (32) hours for controlled substances. If the alcohol test is not administered within two (2) hours following the accident, the supervisor shall prepare a written record stating the reasons the tests were not promptly administered. If no tests were administered within the maximum time limits, the supervisor shall cease attempts to administer the tests and shall record the reasons for not administering the test(s). The record shall be sent to Human Resources to be placed in the employee's CDL file.

Under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable. Any individual conducting the test must be trained to operate the EBT and be proficient in the breath testing procedures.

If a driver is seriously injured and cannot submit to testing at the time of the accident, the driver shall provide the necessary authorization for obtaining hospital reports and other documents that may indicate whether there were any drugs or alcohol used by the driver prior to the accident.

#### E. Return to Duty Test and Follow-up Test

The City's non-DOT Drug Free Workplace Regulation requires employees who test positive for illegal drugs be terminated. If a covered employee is retained after a positive alcohol test, a negative return to duty test is required. Confirmation of or continuing participation in an alcohol or drug rehabilitation program as recommended by a substance abuse professional (SAP), is also required of an employee returning to duty.

Once an employee has been identified as having a problem and has returned to work, the City is required to conduct follow-up testing as recommended by the substance abuse professional. A minimum of six (6) unannounced tests is required in the first 12 months following return to duty. After an employee returns to work, a single positive test result or failure to successfully complete the recommended rehabilitation program will be grounds for disciplinary action up to and including termination.

**For alcohol, the DOT follow-up test may only be given when the driver is performing a safety sensitive function, or just before or just after performing a safety sensitive function.**

The substance abuse professional can modify an employee's required follow-up tests once the employee has completed at least six (6) follow-up tests in the first 12 months of returning to duty. An employee may not be subjected to follow-up testing for more than 60 months following the date of the driver's return to duty. All requirements of follow-up testing go with drivers to subsequent employers and endure any break in employment.

## XII. DISCIPLINARY ACTIONS

When a driver has engaged in prohibited conduct regarding alcohol and/or controlled substance misuse, the City is required by federal regulations to advise the employee of the resources available to evaluate and resolve drug and/or alcohol problems. The City shall provide names, addresses and telephone numbers of substance abuse professionals, counseling and treatment programs, but is under no obligation to retain the employee. The decision to retain the employee is governed by the City. Terminated employees shall also be provided with a referral to allow them the opportunity to receive counseling on their own.

Whenever the City is notified by the Medical Review Officer that a covered employee has tested positive for an illegal drug, the employee will be terminated.

Whenever the City is notified that a covered employee has tested positive for alcohol, the employee, if retained, will be required to take a return to duty test. If the return to duty test is negative, the covered employee may return to the job originally assigned or another similar job as deemed appropriate by the City.

A covered employee who is returned to duty after a negative Return to Duty alcohol test is required to:

- A. Follow and complete the required rehabilitation program recommended by a substance abuse professional and all provisions in the Return to Duty Agreement. Failure to comply with the provisions in the Return to Duty Agreement shall result in disciplinary action up to and including dismissal.
- B. Submit to follow-up testing as recommended by a substance abuse professional with a minimum of six (6) tests for a twelve (12) month period and additional follow-up tests for up to five (5) years thereafter as directed by the substance abuse professional.

If a covered employee tests positive for a City required test a second time after the employee has had a positive alcohol test, while employed with the City of Boise, the covered employee shall be terminated.

A covered employee whose alcohol breath test shows an alcohol concentration of 0.02 or greater, but less than 0.04, shall be removed from the work site and may not return for at least 24 hours and shall have a negative test before returning to work. Employees will only be entitled to pay for hours worked and are subject to disciplinary action up to and including dismissal.

The City may initiate action to dismiss an employee for:

- A. Refusing to obtain counseling or rehabilitation through EAP or state licensed facility; and/or

- B. Not refraining from misuse of alcohol after a first finding of such use.

#### XIII. SAFE HARBOR REFERRAL

The City will not initiate disciplinary action against any employee who meets all three of the following conditions:

- A. Voluntarily identifies him/herself to Human Resources as a user of alcohol and/or illegal drugs, as they apply to this regulation, prior to being identified through other means, or prior to being asked to provide a urine and/or breath sample for testing;
- B. Obtains evaluation, counseling or rehabilitation through an EAP; and
- C. Thereafter refrains from using illegal drugs or misusing alcohol.

This provision is not intended to allow an employee to evade disciplinary action. The key to this provision's rehabilitative effectiveness is an employee's willingness to admit their problem. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit their problem, this provision is not available to an employee who requests protection under this provision after:

- A. Being identified through other means; or
- B. Being asked to provide a urine sample for testing; or
- C. Having had a verified positive test result for alcohol and/or illegal drugs pursuant to this regulation.

#### XIV. CONFIDENTIALITY

All information obtained in the course of testing of drivers shall be protected as confidential medical information. Except as required by law or expressly authorized or required in 49 CFR 382.405, no information that is to be maintained pursuant to 49 CFR 382.401 shall be released. Only authorized individuals who have a need for the information in the performance of their duties will be allowed access to this information

#### XV. RECORDS RETENTION

The following records shall be maintained by the City of Boise or the City's Drug Testing Services provider for a minimum of five (5) years:

- A. Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,
- B. Records of driver verified positive controlled substances test results,
- C. Documentation of refusals to take required alcohol and/or controlled substances tests,
- D. Driver evaluation and referrals,
- E. Calibration documentation,
- F. Records related to the administration of the alcohol and controlled substances testing programs, and
- G. A copy of each annual calendar year summary required by [§382.403](#)

Records that must be retained for two (2) years are records related to the alcohol and controlled substances collection process except calibration of evidential breath testing devices.

Records that must be retained for one (1) year are records of negative and canceled controlled substances test results as defined in [part 40](#) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

Indefinite period: Records that must be retained for an indefinite period are records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.