

# Exhibit A

## COUNTY OF ONEIDA POLICIES AND PROCEDURES

I. **SUBJECT:** Controlled Substance and Alcohol Testing Policy

II. **EFFECTIVE DATE:** January 1, 1996

**REVISED:** \_\_\_\_\_, 2002

III. **PURPOSE:**

To comply with the Omnibus Transportation Employee Testing Act of 1991 (Act) (Pub. L. 102-143, Title V), and the rules mandated by the Federal Highway Administration (FHWA), an agency of the U.S. Department of Transportation. County employees required to have a commercial driver's license (CDL) are subject to the controlled substance and alcohol testing rules promulgated by the FHWA. A CDL is required for drivers operating a vehicle in excess of 26,000 pounds gross vehicle weight rating (GVWR), or is designed to carry 16 or more passengers including the driver, or of any size, which is used in the transportation of a placardable amount of hazardous material.

The Act, and its resulting regulations codified at Title 49 of the Code of Federal Regulations (CFR), Parts 40, 382, and 391, supply the essential requirements for this controlled substance (hereinafter "controlled substance" or "drug") and alcohol testing policy and its procedures, and shall control any inconsistent provision of this policy.

IV. **POLICY:**

The policy is designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by the County's CDL drivers who are engaged in safety-sensitive functions. For purposes of this policy, a "safety-sensitive function" shall be defined to include any of the following on-duty functions:

1. All time at a County facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the County;
2. All time inspecting equipment as required by relevant safety regulations, 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;

4. All time, other than driving time, spent on or in a commercial motor vehicle;
5. All time loading or unloading a commercial motor 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;
6. All time spent performing the driver requirements associated with an accident;
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Alcoholism and drug addiction are treatable diseases and the County will assist employees in overcoming a dependency upon or problems with alcohol or drugs, who are willing to follow a prescribed and approved rehabilitative process, through referrals to appropriate agencies.

The Commissioner of Personnel or his/her designee has been designated by the County to answer questions about this alcohol and drug testing policy, its procedures, and related educational materials. The Commissioner of Personnel or his/her designee will coordinate required training to inform CDL drivers and their supervisors about the dangers of substance abuse and alcohol misuse in the workplace, the disciplinary action that may be imposed upon CDL drivers for substance abuse and alcohol misuse violations in the work place, and the availability of counseling assistance or rehabilitative programs.

All CDL drivers shall be subject to drug and alcohol testing in accordance with the requirements of federal law and related regulations.

All CDL drivers' drug and alcohol testing results and records are maintained under strict confidentiality by the County, the drug testing laboratory, the Substance Abuse Professional (SAP), the Medical Review Officer (MRO), and other agents of the County as necessary. This information cannot be released to others without the written consent of the CDL driver, or except as otherwise permitted by law.

**V. PROCEDURES:**

**ALCOHOL TESTING**

**A. PROHIBITIONS AGAINST ALCOHOL POSSESSION AND USE**

1. "Alcohol use" means consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
2. No CDL driver required to perform a "safety-sensitive function", as that term is defined by law (see 49 CFR § 382.107), shall report for, or remain on duty, while having a breath alcohol concentration of 0.04 or greater. No supervisor having actual knowledge that a driver has a breath alcohol concentration of 0.04 or greater, shall permit the driver to perform or continue to perform safety-sensitive functions.
3. No CDL driver shall possess or use alcohol while performing a safety-sensitive function. No supervisor having actual knowledge that a driver is in possession of or using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions. This includes possession or use of medicines containing alcohol (prescription or over-the-counter) unless the packaging seal is unbroken.
4. No CDL driver shall use alcohol within the four (4) hours preceding the performance of safety-sensitive functions. No supervisor having actual knowledge that a driver has used alcohol within such four (4) hour period shall permit the driver to perform or continue to perform safety-sensitive functions.
5. No CDL driver who will be required to take a post-accident test as outlined herein shall use alcohol for eight (8) hours following the accident or until he/she undergoes the post-accident test, whichever occurs first.
6. No CDL driver shall refuse to submit to any alcohol test required by this policy or FHWA regulations. Penalties for refusal are listed elsewhere in this policy. An employee will be considered to have refused to take an alcohol test under the following circumstances:
  - a. Failure to appear for any test (except a pre-employment test) within a reasonable time after being directed to do so;

- b. Failure to remain at the testing site until the testing process is complete, except that an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- c. Failure to provide an adequate amount of saliva or breath for any alcohol test required by the County, except that an employee who does not provide an adequate amount of breath or saliva because he or she left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- d. Failure to provide a sufficient breath specimen, and the physician has determined through a required medical evaluation, that there was no adequate medical explanation for the failure;
- e. Failure to undergo a medical examination or evaluation, as directed by the County as part of the insufficient breath procedures;
- f. Failure to sign the appropriate certification at the testing site;
- g. Failure to cooperate with any part of the testing process.

## **B. REQUIRED ALCOHOL TESTING**

### **1. PRE-EMPLOYMENT/PRE-DUTY<sup>1</sup>**

- a. The County upon making an offer of employment to an individual required by law to maintain a CDL shall inform said potential CDL driver that the offer is contingent upon successful completion of a test for alcohol use.

---

<sup>1</sup>The FHWA regulations requiring pre-employment/pre-duty alcohol testing were suspended by the agency in May, 1995 until further notice. The County is, however, requiring such testing pursuant to its own authority.

- b. The potential employee shall be required to participate in pre-employment breathalyzer testing. Said testing shall be conducted in accordance with the procedures listed elsewhere in this policy and the FHWA regulations.<sup>2</sup>
- c. Those initial hirees who undergo a pre-employment alcohol test with a result of 0.02 or greater shall not be hired to perform safety-sensitive functions.
- d. Current County employees transferring from one County position to another with the former position not including safety-sensitive functions, shall undergo a pre-duty alcohol test with a result of less than 0.04 prior to beginning said function. If the alcohol test indicates an alcohol content of 0.02 or greater but less than 0.04, the driver shall not be permitted to perform or continue to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test.

## **2. POST-ACCIDENT ALCOHOL TESTING**

- a. "Accident" means an incident involving a commercial motor vehicle in which there is either a fatality, or if the driver received a citation for a moving traffic violation resulting from the accident and an injury is treated away from the scene or a vehicle is towed from the scene.
- b. If in the event of an accident in which a fatality occurs, and/or the driver performing the safety-sensitive function is issued a traffic summons for a moving violation as a result of said accident, if the accident involved bodily injury to any person, who, as a result of the injury, immediately receives medical treatment away from the accident, or if one or more vehicles involved in the accident is required to be towed from the from the scene, he/she shall be required to undergo an alcohol test as soon as possible, and in any event within eight (8) hours of the accident. No testing shall be required if the CDL driver is the fatality.
- c. In the event of an accident occurring as described above, the CDL driver shall be required to follow the reporting requirements in

---

<sup>2</sup>The County reserves the right to utilize other testing methodologies which may be authorized for future use by FHWA regulations.

Section XIII below and remain at the scene and be readily available to undergo alcohol testing. FHWA regulations allow the County to accept the results of alcohol tests given by law enforcement officials at the scene of the accident.

- d. Any CDL driver subject to post-accident testing as required by this policy who leaves the scene of an accident before an alcohol test is administered, or fails to remain readily available for testing, shall be deemed to have refused to submit to breath alcohol testing, and may be penalized accordingly. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver 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.
- e. All alcohol testing required by this section shall be performed by the County or its authorized agent as soon as possible but not more than eight (8) hours after the time of the accident. The time of the accident shall be determined by the hour utilized on the law enforcement agency's accident report. If the test is not administered within two (2) hours of the accident, the driver's department head shall prepare and maintain on file a report stating the reason(s) the test was not promptly administered. If the test is not administered within eight (8) hours of the accident, the County shall cease attempts to administer same and the appropriate department head shall prepare and maintain on file a report stating why a test was not promptly administered.
- f. Law enforcement agencies with the authority to do so, may perform the alcohol testing required by this section providing they are performed in compliance with the FHWA's requirements.

### **3. RANDOM ALCOHOL TESTING**

- a. The County shall test a minimum of ten percent (10%) of its CDL drivers annually. The total number of this unannounced testing shall be based on the average number of affected CDL drivers. The FHWA Administrator may decide in subsequent years to increase or decrease the minimum annual percentage rate for random alcohol testing.
- b. A CDL driver may only be tested for alcohol usage while he/she is performing safety-sensitive functions, immediately before

performing safety-sensitive functions, or immediately after performing safety-sensitive functions. All testing shall be done during normal duty hours, to the extent practicable. Any CDL driver selected for testing while on duty for the purposes of complying with the federal regulations shall be considered as on duty through the completion of the test.

- c. The selection of CDL drivers to be tested shall be determined at random by the County or its authorized agent. The County or its authorized agent ensures that this random selection complies with federal selection requirements. This selection system ensures that each covered CDL driver has an equal chance of being tested each time selections are made, without elimination. The desired effect, therefore, is that a CDL driver may not be selected at all during the course of the year or he/she may be selected several times.
- d. Upon notification of selection for testing, the Commissioner of Personnel or the County's authorized agent will arrange for the selected CDL driver(s) to take the breathalyzer test. In the event that the selected CDL driver is performing a safety-sensitive function at the time of notification, he/she shall cease said function consistent with safety, and proceed to the testing site as soon as possible. The supervisor shall transport the selected CDL driver(s) immediately and directly to the testing site, if necessary.
- e. In the event that a CDL driver is off from work for an extended period of time due to long-term layoff, illness, injury, or vacation, his/her name shall be skipped and the next person's name on the list selected and tested. Said CDL driver's name shall be returned to the system for the next round of testing.

#### **4. REASONABLE SUSPICION ALCOHOL TESTING**

- a. "Reasonable suspicion" means a belief that the driver has violated the alcohol prohibitions of this policy, based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.
- b. All persons who supervise CDL drivers shall undergo a minimum of (1) hour of classroom training. The training shall minimally include:
  - i. Sixty (60) minutes on detecting and recognizing the physical, behavioral, speech and performance indicators of probable alcohol misuse;

particularly those associated with lower concentrations of alcohol.

- c. When a trained supervisor or other trained County official has reasonable suspicion that a CDL driver may be under the influence of alcohol he/she shall:
  - i. Complete the Supervisor's Report of Reasonable Suspicion following the appropriate instructions.
  - ii. Contact the department head or designee to report the occurrence immediately. The supervisor will be given instructions as to what action should be taken, e.g., arrange to have the CDL driver transported to the acknowledged testing site for breathalyzer testing. To the extent practicable, a County official other than the immediate supervisor will provide such transportation.
- d. Alcohol testing is authorized by this policy only if the required observations are made just before, during or immediately after performing safety-sensitive functions. The mere possession of alcohol does not constitute a need for reasonable suspicion testing, which must be based on observations concerning the driver's appearance, behavior, speech, or body odor.
  - i. Alcohol testing should be conducted no more than two (2) hours after the reasonable suspicion determination has been made by the supervisor, and in any event within eight (8) hours.
  - ii. If said testing is not performed within this two (2) hour period, a report shall be prepared by the employee's department head indicating the reason(s) for not promptly administering same. If the test is not administered within eight (8) hours, the County shall cease attempts to administer the test and the department head shall prepare a report indicating the reason(s) for not administering the test.

## **5. RETURN TO DUTY ALCOHOL TESTING**

- a. Prior to returning to a safety-sensitive function, any CDL driver who was determined to have engaged in alcohol related conduct prohibited by this policy and the FHWA regulations shall undergo a return to duty alcohol test indicating a breath alcohol concentration

of less than 0.02. Such test cannot occur until after the Substance Abuse Professional (SAP) has determined that the employee has successfully complied with prescribed education and/or treatment.

## **6. FOLLOW-UP ALCOHOL TESTING**

- a. Any CDL driver who has required referral, evaluation, and/or treatment by a SAP for alcohol use shall be subject to unannounced follow-up testing as directed by the SAP.
- b. Follow-up testing for alcohol use shall be performed only just before, during or immediately after performing safety-sensitive functions.
- c. In no case shall said testing occur less than six (6) times in the first twelve (12) months following the CDL driver's return to duty nor shall testing extend more than five (5) years from the time he/she returned to duty.
- d. The SAP may terminate the requirement for follow-up testing at any time after the first six (6) tests have been administered if he/she determines that same is no longer required.
- e. The CDL driver shall be further evaluated by the SAP to ensure that he/she has properly followed any prescribed rehabilitation program.

## **CONTROLLED SUBSTANCES TESTING**

- A. All testing is to be done by a certified laboratory with the results being reviewed by a licensed physician (Medical Review Officer or MRO).

Drug testing is done by urine sample. Testing will be done for the following drugs:

- Marijuana (THC metabolite)
- Cocaine
- Amphetamines
- Opiates (including heroin)
- Phencyclidine (PCP)

## **B. PROHIBITIONS AGAINST CONTROLLED SUBSTANCES POSSESSION AND USE**

1. No CDL driver who may be required to perform a "safety-sensitive function" as that term is defined by law (see 49 CFR § 382.107) shall report for, or remain on duty, when the driver uses any controlled substance.
  - a. If a CDL driver is required to take a prescription medication pursuant to the instruction of a licensed physician, he/she may be required to provide documentation of same which states that said medication does not adversely affect the ability to safely operate a commercial motor vehicle.
2. No supervisor having actual knowledge that a CDL driver has used a controlled substance shall permit the driver to perform or continue to perform safety-sensitive functions in violation of FHWA regulations.
3. No CDL driver shall report for or remain on duty if the driver tests positive for controlled substances.
4. No supervisor having actual knowledge that a CDL driver has tested positive for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.
5. No CDL driver shall refuse to submit to any controlled substance test required by this policy or FHWA regulations. Penalties for refusal are listed elsewhere in this policy. An employee will be considered to have refused to take a controlled substance test under the following circumstances:
  - a. Failure to appear for any test (except a pre-employment test) within a reasonable time after being directed to do so;
  - b. Failure to remain at the testing site until the testing process is complete, except that an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
  - c. Failure to provide a urine specimen for any controlled substance test required by the County, except that an employee who does not provide a urine specimen because he or she left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;

- d. In the case of a directly observed or monitored collection, failure to permit the observation or monitoring of the provision of a specimen;
- e. Failure 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;
- f. Failure to take a second test the County or collector has directed the employee to take;
- g. Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process. In the case of a pre-employment 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;
- h. Failure to cooperate with any part of the testing process

**C. REQUIRED CONTROLLED SUBSTANCES TESTING**

**1. PRE-EMPLOYMENT/PRE-DUTY**

- a. The County upon making an offer of employment to an individual who shall be required by law to maintain a CDL, shall inform said potential employee that the offer is contingent upon the successful completion of a test for controlled substances use.
- b. The potential employee shall present himself/herself for a post-offer controlled substances urine test. This test shall be conducted in accordance with the applicable FHWA regulations.
- c. Those CDL drivers who undergo a pre-employment controlled substances test in which the verified test results indicate positive use shall not be hired.
- d. Current County employees transferring from one County position to another with the former not including safety-sensitive functions, shall undergo a pre-duty controlled substances test with a verified negative test result prior to beginning said functions.

**2. POST-ACCIDENT CONTROLLED SUBSTANCES TESTING**

- a. In the event of an "accident" in which a fatality occurs, and/or the CDL driver performing the safety-sensitive function is issued a police traffic summons for a moving violation as a result of said "accident", said CDL driver shall be required to undergo a test for controlled substances use within thirty-two (32) hours. No testing shall be required if the CDL driver is the fatality. For the purpose of this policy, an accident is defined as an incident involving a commercial motor vehicle in which there is a fatality, an injury treated away from the scene, or a vehicle is required to be towed from the scene.
- b. In the event of an accident occurring as described above, the CDL driver shall be required to follow the reporting requirements in Section XIII of this policy and remain at the scene or readily available to undergo testing for controlled substances use. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver 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.
- c. Any CDL driver subject to post-accident testing as required by this policy who leaves the scene of an accident or fails to remain readily available for testing, shall be deemed to have refused to submit to a controlled substances test. Such a refusal shall be treated by the County in the same manner as if the CDL driver had a verified positive test for controlled substances use.
- d. All controlled substance testing required by this section shall be performed by the County or its authorized agent as soon as practicable after the time of the accident but within thirty-two (32) hours. The time of the accident shall be determined by the hour utilized on the law enforcement accident report.

If a controlled substance test required by this section is not administered within thirty-two (32) hours following the accident, the County shall cease attempts to administer same and the appropriate department head shall prepare and maintain on file, a report stating the reason why a test was not promptly administered.

- e. Law enforcement agencies, with the authority to do so, may perform the controlled substance testing required by this section

providing they are performed in compliance with the FHWA's requirements.

### **3. RANDOM CONTROLLED SUBSTANCES TESTING**

- a. The County shall test a minimum of fifty percent (50%) of its CDL drivers annually. The total number of this unannounced testing shall be based on the average number of affected CDL drivers.
- b. A CDL driver may be tested for controlled substance use at any time during normal working hours.
- c. The selection of CDL drivers to be tested shall be determined at random by the County or its authorized agent. The County or its authorized agent ensures that this random selection complies with federal selection requirements. This ensures that each covered CDL driver has an equal chance of being tested each time selections are made, without elimination. The desired effect, therefore, is that a CDL driver may not be selected at all during the course of the year or he/she may be picked several times.
- d. Upon notification of selection for testing, the supervisor shall transport the CDL driver to the testing site, if necessary. In the event that the selected CDL driver is performing a safety-sensitive function at the time of notification, he/she shall cease said function consistent with safety, and proceed to the testing site as soon as possible.
- e. In the event that the CDL driver is off from work for an extended period of time due to long term illness, injury, or vacation, his/her name shall be returned for future selection and another CDL driver shall be selected in his/her place.

### **4. REASONABLE SUSPICION CONTROLLED SUBSTANCES TESTING**

- a. "Reasonable suspicion" means a belief that the driver has violated controlled substance prohibitions of this policy based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.
- b. All persons who supervise CDL drivers shall undergo a minimum of one (1) hour of classroom training. The training shall minimally include:

Sixty (60) minutes on detecting and recognizing the physical, behavioral, speech and performance indicators of probable controlled substance use.

- c. When a trained supervisor has reasonable suspicion that a covered CDL driver may be under the influence of a controlled substance, he/she shall:
  - i. Complete the Supervisor's Report of Reasonable Suspicion form following the appropriate instructions.
  - ii. Contact the department head or designee to report the occurrence immediately. The supervisor will be given instruction as to what action shall be taken, e.g., drive the CDL driver to the testing site.
  - iii. The observations of the supervisor may include indications of the chronic and withdrawal effects of controlled substances.
- d. Controlled substances testing is authorized by this section at any time only if, however, the required report is made and the observation report received by the department head or designee within twenty-four (24) hours of said observation.
  - i. Controlled substances testing shall be performed within thirty-two (32) hours of the observation by the supervisor.
  - ii. If said testing is not performed within the thirty-two (32) hour time period, a report shall be prepared by the employee's department head indicating the reason(s) for not promptly administering same.

## **5. RETURN TO DUTY CONTROLLED SUBSTANCE TESTING**

- a. Prior to returning to a safety-sensitive function, any CDL driver who was determined to have engaged in controlled substance use prohibited by this policy shall undergo a return to duty controlled substance test with a verified negative result. Such test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment.

## **6. FOLLOW-UP CONTROLLED SUBSTANCE TESTING**

- a. Any CDL driver who has required referral, evaluation, and/or treatment by the substance abuse professional (SAP) for controlled substance use may be subject to unannounced follow-up testing as directed by the SAP.
- b. In no case shall said testing occur less than six (6) times in the first twelve (12) months following the CDL driver's return to duty nor shall testing extend more than five (5) years from the time he/she returns to duty.
- c. The SAP may terminate the requirement for follow-up testing at any time after the first six (6) tests have been administered if he/she determines that same is no longer required.
- d. The CDL driver shall be further evaluated by the SAP to ensure that he/she has properly followed any prescribed rehabilitation program.

## **VI. PENALTIES FOR VIOLATION OF POLICY**

### **A. ALCOHOL POSSESSION, USE, AND TESTING**

1. Any CDL driver found to be in possession of alcohol shall immediately be removed without pay from the performance of safety-sensitive functions until the next scheduled work period providing twenty-four (24) hours have elapsed.
  - a. Other appropriate disciplinary action may ensue consistent with County policy and/or the applicable collective bargaining agreement.
2. Any supervisor with actual knowledge of alcohol possession shall report the occurrence as outlined in this section or shall be subject to disciplinary action up to and including termination for violation of policy.
3. The testing for alcohol includes a two-tiered system of consequences for violations of this policy:
  - a. If a CDL driver's breath test indicates an alcohol concentration of 0.02 or greater but less than 0.04, the CDL driver shall not be permitted to perform safety-sensitive functions until the next scheduled work period providing

twenty-four (24) hours have elapsed or a retest indicates the alcohol concentration has fallen below 0.02.

- b. If a CDL driver's breath test indicates an alcohol concentration of 0.04 or greater, said CDL driver shall not return to a safety-sensitive function until evaluated, and treated if required by the SAP, and retested with a result below 0.02.
- c. The penalty for refusing to submit to alcohol testing required by FHWA regulations may include, but is not necessarily limited to, removal from safety-sensitive functions, treatment as if tested at 0.04, and a return to duty test with a result of less than 0.02.

## **B. CONTROLLED SUBSTANCES POSSESSION USE AND TESTING**

- 1. Any CDL driver found to be in possession of a controlled substance or product containing a controlled substance in violation of this policy, shall immediately be removed without pay from the performance of safety-sensitive functions until the next scheduled work period providing thirty-two (32) hours has elapsed.
  - a. Possession as indicated above shall constitute immediate grounds for reasonable suspicion testing.
- 2. Any supervisor with actual knowledge of controlled substance possession shall report the occurrence as outlined in this section or shall be subject to disciplinary action up to and including termination of employment for violation of policy.
- 3. The testing for controlled substance use shall be conducted by the County pursuant to FHWA regulations and as further outlined in Section X of this policy.
  - a. Testing required by this policy shall consist of the providing of a urine sample by the CDL driver which will be split into two (2) separate units and analyzed by a certified laboratory using the initial immunoassay and confirmatory gas chromatography/mass spectrometry (GC/MS) methods..
  - b. If a CDL driver tests positive for controlled substance use, he/she shall be removed without pay from safety-sensitive functions and have an opportunity for the second sample to

be tested by a second laboratory. See Section X of this policy.

- c. If the second sample verifies the positive test of the first, the CDL driver shall be required to undergo evaluation and treatment if required by the SAP, and a return to duty test indicating a negative test result.
- d. A CDL driver requesting the second sample to be tested by an independent laboratory will be reimbursed by the County if the test result is negative but shall bear the expense of the test if the second test is positive.
- e. The penalty for refusing to submit to a controlled substance test required by this policy and the FHWA regulations shall include removal from safety-sensitive functions without pay, treatment as if tested positive, and a negative return to duty test.

**C. DISCIPLINARY ACTION AND OTHER PENALTIES**

- 1. Violations of law related to this policy may result in legal penalties including but not limited to license suspension, license revocation, and/or substantial fines.
- 2. Violations of this policy and related departmental work rules may result in disciplinary action up to and including dismissal. The County reserves the right to seek more severe disciplinary action than may be specified in this policy, as necessary, depending upon individual employment circumstances.

## **VII. RECORD RETENTION, INFORMATION REPORTS, AND CONFIDENTIALITY**

### **A. RETENTION OF RECORDS.**

1. The County shall retain for a period of not less than five (5) years, in a secure location with controlled access, the following records relating to this policy:
  - a. Records of CDL drivers' alcohol tests in which the results indicate an alcohol concentration of 0.02 or greater.
  - b. Records of CDL drivers' verified positive controlled substances tests.
  - c. Documentation of refusals to submit to required alcohol and/or controlled substances tests.
  - d. Breath testing equipment calibration documentation.
  - e. CDL drivers' evaluations and referrals.
  - f. All follow-up tests and schedules for follow-up tests.
  - g. A copy of each calendar year summary as may be required by the FHWA.
2. The County shall retain for a period of not less than two (2) years, in a secure location with controlled access, the following records relating to this policy:
  - a. All records relating to the alcohol and controlled substances collection process (except calibration of EBT devices) and training.
3. The County shall retain for a period of not less than one (1) year, in a secure location with controlled access, the following records relating to this policy:
  - a. All records of negative and canceled drug test results.
  - b. Breath alcohol tests with a concentration of less than 0.02.
4. The County shall maintain the following specific records:
  - a. Collection log books.

- b. All documents relating to the random selection process.
- c. Calibration documentation for all evidential breath testing devices.
- d. Documentation of breath alcohol technician training.
- e. All documents relating to decisions to administer reasonable suspicion testing for alcohol and/or controlled substances.
- f. All documents generated in connection with decisions on post-accident testing.
- g. All documents verifying the existence of a medical explanation of the inability of a CDL driver to provide adequate breath or to provide a urine specimen for testing.
- h. Consolidated annual calendar year summaries as may be required by the FHWA.
- i. The employer's copy of the alcohol test form, including the test results.
- j. The employer's copy of the controlled substance test chain of custody and control form.
- k. Documents sent by the MRO to the County.
- l. Documents related to the refusal of any CDL driver to submit to an alcohol or controlled substances test.
- m. Documents presented by a CDL driver to dispute the result of an alcohol or controlled substance test administered.
- n. Records related to other violations of this policy.
- o. Records pertaining to a determination by the SAP concerning a CDL driver's need for assistance.
- p. Records concerning a CDL driver's compliance with the recommendations of the SAP.
- q. Training materials on alcohol misuse and controlled substance use, awareness, and a copy of this policy.

- r. Documentation of the training requirements of this policy including the CDL driver's signed receipt of educational materials.
- s. Documentation of training provided to supervisors for the purpose of qualifying them to make a determination concerning the need for alcohol and/or controlled substances testing based upon reasonable suspicion.
- t. Certification that any training conducted relevant to this policy complies with the requirements of the FHWA.
- u. Any and all agreements with controlled substances testing laboratories, collection site facilities, MROs, and consortia, utilized by the County for complying with the FHWA regulations.
- v. Names, positions, and roles of the persons employed by the County who are responsible for maintaining compliance with the FHWA regulations.
- w. Semi-annual laboratory statistical summaries of urinalyses performed by same.
- x. The drug and alcohol testing policy of the County.
- y. The location of all records and the person responsible for maintaining said records.
- z. Documentation of training for breath alcohol technicians (BATs).

**B. CONFIDENTIALITY**

- 1. Except as required by law or expressly authorized or required by the FHWA, the County shall not release CDL driver information contained in records required to be maintained pursuant to this policy.
- 2. Any affected CDL driver currently employed by the County may request in writing copies of any written records pertaining to his/her own use of alcohol and/or controlled substances. There shall be no charge for these records.

3. CDL drivers' alcohol and controlled substance records shall be made available to a subsequent employer upon receipt of a written request from a CDL driver. Disclosure by the subsequent employer is permitted only as

expressly authorized by the terms of the CDL driver's request. A fee for duplication of the records may be charged consistent with County policy.

4. The County may disclose information required to be maintained under this policy pertaining to a CDL driver to the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this policy or if the County determines that the CDL driver engaged in conduct prohibited by this policy (including, but not limited to, a Workers' Compensation, unemployment compensation, or other proceeding relating to a benefit sought by the CDL holder).
5. The County shall release information regarding a CDL driver's records as directed by the specific, written consent of the CDL driver authorizing release of the information to an identified person. Release of information by the person receiving same is permitted only in accordance with the terms of the CDL driver's consent. A fee for duplication of the records may be charged consistent with County policy.

#### **VIII. MEDICAL REVIEW OFFICER (MRO)**

A. Only a licensed physician with knowledge of substance abuse disorders may serve as the MRO. The primary role of the MRO is to review and interpret confirmed positive drug test results.

1. The MRO shall ensure that the Commissioner of Personnel or his/her designee receives copies of all verified results from laboratories either positive or negative.
  - a. If a controlled substance test received is positive, the identity of the substance(s) shall be included.
  - b. Under this policy, a verified positive test result or a refusal to test because of adulteration or substitution allows the CDL driver an opportunity for a test of the second or split sample as discussed in Section X of this policy. Upon notification by the laboratory that the initial sample is positive, the MRO shall make a reasonable effort to contact the affected employee as soon as practicable, or as otherwise permitted by FHWA regulations. The purpose of such contact is to permit the CDL driver an opportunity to discuss the test result with the MRO. If after making all reasonable efforts and documenting them, the MRO is unable to reach the driver directly, the MRO shall contact the Commissioner of Personnel or his/her

designee, who shall direct the driver to contact the MRO as soon as possible (within 24 hours).

- c. The MRO shall also forward copies of the record which details the notification of the affected CDL driver to the Health and Safety Officer.
3. The MRO shall maintain all dated records and notifications for verified positive controlled substances test results, identified by individual, for a minimum of five (5) years.
4. The MRO shall maintain all dated records and notifications for negative and cancelled controlled substances test results, identified by individual, for a minimum of one (1) year.
5. The MRO shall not release any CDL driver's controlled substances test results to any person without first obtaining a specific, written authorization from the tested CDL driver, or as otherwise permitted by law. In any event, this shall not prohibit the MRO from releasing results to the employer, federal, state, or local officials with regulatory authority over the controlled substances testing program.

## **IX. EMPLOYEE NOTIFICATIONS**

- A. The County or its agent shall notify a CDL driver of the results of random, reasonable suspicion, and post-accident tests for controlled substances conducted under this policy if the test results are verified positive. The CDL driver shall be informed of what substance(s) were positive.

## **X. CONTROLLED SUBSTANCES TEST PROCEDURES**

Urine collection for drug testing shall be done at a location that provides:

1. a privacy enclosure for urination
2. a toilet receptacle large enough to contain a complete void
3. a source for washing hands
4. a suitable surface for writing

The collection site personnel shall be trained in the proper procedures for preparing the collection site, collecting the urine specimen, sealing and preparing the specimen for shipment and completing the custody and control form as required in 49 CFR Part 40.

A DOT drug testing custody and control form will be used for the collection.

The collection room shall be inspected by the collector before and after each specimen collection for removal of any unauthorized persons and materials that could be used to adulterate the specimen. The collection site will be secure to prevent unauthorized access during the collection process.

The collector will verify the employee's identity by photo identification or by a County representative. The collection will not proceed if identity is not verified. The collection site will notify the County if the employee fails to report or arrives more than 30 minutes late for the appointment.

The employee will be requested to check belongings (purses and briefcases) and remove any bulky outerwear (sweaters, jackets, vests, etc.). The employee may retain his/her wallet.

The employee will be directed to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is present that can be used to adulterate a specimen, the employee can place the items back into his or her pockets.

The employee will be directed to wash his/her hands.

The collector will unwrap the collection cup or specimen bottle in front of the employee and direct them to the privacy enclosure. The collector remains outside the enclosure. The employee is instructed to provide at least 45 ml (about 2 ounces) of urine.

If the employee is unable to provide at least 45 ml of urine, he/she will be given up to 40 ounces of fluids and remain at the collection site for up to three hours in an attempt to provide the specimen. If the required amount is provided, the original sample is discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen is discarded, testing discontinued and the County notified. The MRO shall refer the employee for a medical evaluation to determine whether the employee's inability to provide a specimen is genuine or constitutes a refusal to submit to a drug test. The examining physician shall provide the MRO a brief statement setting forth his/her conclusion and the basis for it. Upon receipt of the statement the MRO shall report his/her conclusions to the County in writing. If the MRO determines there is no medical explanation for the inability to provide an adequate specimen, this will be considered a refusal to test.

Within four minutes of receiving the specimen from the employee, the collector will record the temperature of the specimen on the custody and control form. The temperature must be between 90.0 and 100.0 F. The collector shall also visually examine the specimen for any unusual color or sediment, and note the results on the custody and control form.

If the employee refuses to cooperate with the collection process, the collector notifies the County immediately and documents the non-cooperation on the custody and control form.

If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottles, to be used as the split specimen. If a specimen bottle is used as a collection container, the collector shall pour off 30 ml of urine from the specimen bottle into a second specimen bottle, to be used as the primary bottle), and retain the remainder (at least 15 ml) in the collection bottle to be used as the split specimen.

Both bottles must be sealed and labeled in the presence of the donor. The labels must be printed with the same specimen identification number as the custody and control form. The donor initials the seals on the bottles verifying the specimen is his/hers.

The custody and control form is completed. The collector and the donor must sign the appropriate certification statements on the form regarding authenticity of the specimen and information provided and the integrity of the collection process. Each transfer of custody must be noted on the chain of custody portion of the urine custody and control form. Every effort should be made to minimize the number of persons handling the specimen.

The specimen must be stored in a secured location until transport to the laboratory. Both the primary specimen and the split specimen shall be sealed in a single shipping container, together with the appropriate pages of the custody and control form. The tape seal on the container shall bear the initials of the collector and the date of the closure for shipment.

### **Observed Collections**

Procedures for collecting urine specimens shall allow individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided.

In the following circumstances the collector must observe the second collection immediately after the first collection.

1. The employee has presented a urine sample that falls outside the normal temperature range (90.0 to 100.0 F).

- ! The collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the same (e.g. substitute urine in plain view, blue dye in specimen presented, etc.).
- ! The original specimen appeared to have been tampered with.
- ! Previous sample is invalid and there is no medical reason.
- ! The MRO reports that an original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed.

Sample may be observed if employer/MRO requests as a result of:

- ! The employee has previously been determined to have used a controlled substance without medical authorization and the particular test is being conducted under the FTA regulations as a return to duty or follow-up test.

The direct observation must be by a collector (or observer) of the same gender as the employee being tested.

## **XI. ALCOHOL TESTING PROCEDURES**

Alcohol testing shall be done at a location that provides:

- ! Privacy to the individual being tested
- ! Security with no unauthorized access at any time to the evidential breath testing device (EBT)
- ! BAT conducting only one test at a time who must not leave the testing site while the preparations for testing or the test itself are in progress.

Upon arrival at the testing site the employee must provide positive identification in the form of photo identification or identification by a County representative. The BAT will explain the testing procedures to the employee.

The BAT and the employee will complete, date and sign Step #1 and Step #2 of the alcohol testing form indicating the employee is present and providing a breath specimen. Refusal by the employee to sign Step #2 of the alcohol testing form will be noted by the BAT in the remarks section and is considered a refusal to test.

### **Screening Test**

Employee is informed that testing will begin with a screening test. The BAT will open an individually sealed, disposable mouthpiece in view of the employee and attach it to the EBT.

The employee will be instructed to blow forcefully into the mouthpiece for at least six seconds or until an adequate amount of breath has been obtained. The BAT will show the employee the result displayed on the EBT or the printed result.

If an employee is unable to provide enough breath for a complete test, he/she shall be referred to a licensed physician for evaluation. If the evaluation fails to detect a legitimate medical reason for the inability to provide a sufficient breath sample, the employee shall be deemed to have refused testing. Additionally, if an employee is unable to provide a sufficient breath sample, he/she shall bear the cost of the medical referral.

If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is required. The BAT and the employee will finish filling out the alcohol testing form. The employee may return to their safety sensitive position and the test will be reported to the County as a negative.

Note: Alcohol screens may be performed by certified Screening Test Technicians (STT) using alternative alcohol screening devices approved by the Department of Transportation. The alternative methods may test either breath or saliva. If the screening results are 0.02 or greater, a confirmation test by a BAT, using an evidential breath testing device, must be performed.

### **Confirmation Test**

If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test must be performed.

The confirmation test must be conducted at least 15 minutes, but not more than 30 minutes, after the completion of the initial test. This delay prevents any accumulation of alcohol in the mouth from leading to an artificially high reading.

The BAT will inform the employee of the need to conduct a confirmation test. The employee will be instructed not to eat, drink or put any object or substance in his/her mouth. The BAT will also instruct the employee not to belch to the extent possible while awaiting the confirmation test. The BAT will inform the employee that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instructions.

Before the confirmation test is administered, the BAT shall conduct an airblank on the EBT. IF the reading is greater than 0.00, the BAT shall conduct one more

airblank. If the second airblank reading is greater than 0.00, the EBT must not be used to conduct the test.

The confirmation test is conducted using the same procedures as the screening test. A new mouthpiece will be used.

If the initial and confirmatory test results are not identical, the confirmation test result is deemed to be the final result.

If the result displayed on the EBT is not the same as that on the printed form, the test will be cancelled, and the EBT removed from service.

The BAT will sign and date the form. The employee will sign and date the certification statement, which includes a notice that the employee cannot perform safety-sensitive duties or operate a motor vehicle if the results are 0.02 or greater. Refusal by the employee to sign the certification statement is not considered a "refusal to test," but will be noted in the remarks section by the BAT.

The BAT will attach the alcohol test result printout directly onto the alcohol collection form with tamper proof tape (unless the EBT prints the results directly on the form).

### **Reporting**

The BAT will transmit all results to the County's designated representative in a confidential manner. In the event an individual must be removed from safety-sensitive duties, the BAT will notify the County's representative immediately.

## **XII. REFERRAL TO A SUBSTANCE ABUSE PROFESSIONAL (SAP)**

- A. If referral to the SAP is required as a result of alcohol and/or controlled substances abuse, the CDL driver shall be required to abide by the SAP's recommendations for return to duty.

## **XIII. ACCIDENT REPORTING PROCEDURES**

- A. Upon being involved in a motor vehicle accident while operating a commercial motor vehicle, the driver shall:
  - 1. Contact a County supervisor by the fastest possible means, relating the vehicle identification number and the location of the accident.
  - 2. The County supervisor shall notify the law enforcement agency having jurisdiction to respond.

3. The supervisor shall respond to the scene of the accident if possible and/or practical.
  4. The supervisor shall contact the Commissioner of Personnel in the event of a fatality or if the CDL driver of the commercial motor vehicle will receive a police traffic summons for a moving violation.
  5. Upon receipt of the message that one of the above incidents has occurred, the supervisor will be informed as to what action to take.
- B. This section is in no way intended to prevent an injured person from getting immediate medical attention.
- C. No CDL driver involved in a motor vehicle accident shall consume alcoholic beverages for a period of eight (8) hours immediately following same or until after a breath alcohol concentration test has been performed whichever comes first.

#### **XIV. EMPLOYEE ASSISTANCE PROGRAM**

It is the County's intent to encourage employees to recognize and deal with alcohol and substance abuse problems before a positive test results in the actions required by this policy. No special treatment will be given to employees enrolled in volunteer substance abuse treatment programs should they test positive as a result of required testing.

The Employee Assistance Program (EAP) is a benefit available to all County employees and their immediate families. It is designed to offer free, confidential assistance to employees who may have personal concerns that impair their job performance. Since the EAP is confidential, no one will be informed that the employee has contacted the EAP contact person(s) unless a release of information form is completed by the employee. This form designates the nature of the information to be released and to whom the information may be released.

The EAP provides assessment and referral only. Any employee experiencing a personal concern may call a designated person to discuss the matter confidentially. In that conversation, the EAP contact will help the employee clarify the problem, and recommend a course of action to resolve the problem. Based on the assessment, employees may be referred to a number of different agencies or services to meet their needs.

The EAP contact will not complete a substance abuse evaluation for an employee experiencing a drug or alcohol problem, but will assist the employee with an appropriate referral to a substance abuse professional for evaluation. It

is the employee's responsibility to pay for a substance abuse evaluation and ongoing services, if a fee is charged and not eligible for reimbursement under the County's health insurance plan.

The EAP contact can be reached by telephone. All calls are treated confidentially. Please refer to the EAP brochure for the telephone number(s) to call.