

RESOLUTION 2011-07

A RESOLUTION AMENDING SECTION 18, ALCOHOL AND DRUG USE SCREENING, TESTING, AND TREATMENT; AND ENACTING SECTION 18A, ALCOHOL AND DRUG USE SCREENING, TESTING, AND TREATMENT FOR COMMERCIAL DRIVER LICENSE HOLDERS OF THE PERSONNEL POLICIES AND PROCEDURES MANUAL

WHEREAS, the Tooele County Commission finds it necessary to update the County's alcohol and drug use policies to broaden the scope of drugs the County tests for, make technical corrections, and to create a new section which specifically addresses the Department of Transportation's rules and regulations for CDL drivers.

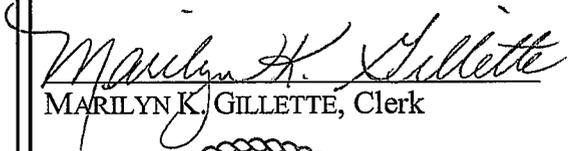
NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE COUNTY COMMISSION that Personnel Policies and Procedures Section 18, Alcohol and Drug Use Screening, Testing, and Treatment, is hereby amended to read as attached hereto, which attachment is, by this reference, made a part hereof, and Section 18A, Alcohol and Drug Use Screening, Testing, and Treatment for Commercial Driver License Holders, is hereby enacted to read as attached hereto, which attachment is, by this reference, made a part hereof.

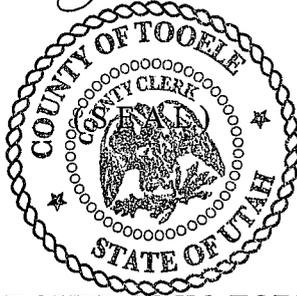
EFFECTIVE DATE: This resolution shall take effect immediately upon passage.

DATED this 19th day of July 2011.

Res. 2011-07

ATTEST:


MARILYN K. GILLETTE, Clerk



APPROVED AS TO FORM:


DOUG HOGAN
Tooele County Attorney

TOOELE COUNTY COMMISSION:


COLLEEN S. JOHNSON, Chairman

Commissioner Johnson voted Aye
Commissioner Clegg voted Aye
Commissioner Hurst voted Absent

SECTION 18
ALCOHOL AND DRUG USE SCREENING, TESTING, AND TREATMENT

A. POLICY STATEMENT:

1. Tooele County recognizes there must exist a healthy and productive work force within the county, safe working conditions free from the effects of drugs and alcohol, and high quality services rendered to the public. These circumstances are vital to the functioning of county government, the safety of its employees, and the well-being of the general public.
2. The use of illegal drugs and alcohol and abuse of legal medications on the job creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, decreased employee morale, and a decline in the quality of services rendered to the public. Such use and abuse may be in violation of the criminal laws of the State of Utah. It greatly increases the potential legal liability of the county for accidents and misconduct of its employees.
3. In balancing the interests of the county and its employees and volunteers with the interests and welfare of the general public, the county commission finds it is in the best interest of all parties to implement a drug-free workplace policy in accordance with the Local Governmental Entity Drug-Free Workplace Enabling Act, Section 34-41-101, et seq., Utah Code Ann., 1953, as amended, the Federal Drug-Free Workplace Act of 1988, 41- U.S.C. 701 et seq.; and the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102-143, Title V. Accordingly, this policy addresses alcohol and drug screening, testing, and treatment for all county employees, including those who hold a commercial driver license (CDL). Employees who hold a commercial driver license (CDL) as a condition of their employment are also subject to Section 18A of the Tooele County Personnel Policies and Procedures.
4. In adopting this policy, it is the intent and objective of the county commission to be as comprehensive as possible in addressing the issues of safety, confidentiality, privacy, alcohol and drug use education treatment, and the appropriate use of alcohol and drug testing as described in this policy.

B. DEFINITIONS:

As used in this section:

1. "Abuse" or "misuse" means the use of either an illegal substance or controlled substance obtained without a prescription for other than medicinal purposes; the inappropriate use of drugs obtained by prescription; or the inappropriate use of legally obtained alcohol products or over-the-counter medications.
2. "Act" means the Local Governmental Entity Drug-Free Workplace Enabling Act, Utah Code Ann. 34-41-101, et seq., 1953, as amended.

3. "Alcohol" means any or all alcoholic beverages, including hard liquor, beer or wine.
4. "Alcohol test" means the scientific analysis for the presence of alcohol in the human body.
5. "Commercial driver license" or "CDL" means a license required to operate a commercial vehicle.
6. "Commercial vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - a. has a gross vehicle weight rating of more than 26,000 pounds, including a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - b. is designed to transport 16 or more passengers including the driver; or
 - c. is of any size, is used to transport hazardous materials, and is required to be placarded.
7. "Confirmation test" means:
 - a. for alcohol testing, a second test following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration; and
 - b. for drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.
8. "Driver" means any person who operates a commercial vehicle.
9. "Drug" means any substance recognized as a drug in the Utah Controlled Substances Act, Title 58, Chapter 37, Utah Code Ann. 1953 as amended, or the Federal Controlled Substances Act, Title II, Pub. L. 91-513.
10. "Drug testing" or "drug test" means the scientific analysis for the presence of drugs or their metabolites in the human body. Tooele County will drug test for drugs including, but not limited to, the following:
 - a. marijuana (THC);
 - b. cocaine;
 - c. opiates;
 - d. phencyclidine (PCP);

- e. amphetamines, including methamphetamines;
 - f. barbiturates;
 - g. benzodiazepines;
 - h. propoxphene;
 - i. methadone;
 - j. hydrocodone; and
 - k. oxycodone.
11. "Employee" means every person working for Tooele County, whether compensated or not, including volunteers, full and part-time, temporary, merit, merit exempt and community service workers.
 12. "Medical review officer" means a licensed physician who has knowledge of substance abuse disorders and has the training to interpret and evaluate test results.
 13. "Prospective employee" means any person who has made written or oral application to become an employee of the county.
 14. "Reasonable suspicion" means an articulated belief based on recorded specific facts and reasonable inferences drawn from those facts.
 15. "Rehabilitation testing" means unannounced but preselected drug or alcohol testing done as part of a program of counseling, education and treatment of an employee.
 16. "Safety sensitive" means any employee whose job is described as safety sensitive or performs any act which is safety sensitive, such as operating a commercial vehicle or heavy equipment.
 17. "Safety-sensitive function" means anytime a CDL holder is driving a commercial vehicle, is ready to drive a commercial vehicle, or is immediately available to drive as an employment responsibility. It also means any employee performing an act which is safety sensitive, such as operating a commercial vehicle or heavy equipment.
 18. "Sample" means any sample of urine or breath to be used for drug or alcohol testing.
 19. "Screening test" means:
 - a. in alcohol testing, an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system; and

- b. in drug testing, an immunoassay screen to eliminate “negative” urine specimens from further consideration.
20. “Substance abuse professional” means a licensed physician, psychologist, social worker, employee assistance professional, or addiction counselor trained in the diagnosis and treatment of drug and alcohol abuse.

C. USE OF ALCOHOL OR DRUGS:

1. No employee shall drink alcohol while on Tooele County property, in a county vehicle, in a private vehicle on county business, at a county work site, on county business, or while representing county interests.
2. No employee shall report for a regularly scheduled duty shift or be on duty while under the influence of alcohol or any drug to the extent that it adversely affects the proper performance of the employee’s job or renders the employee incapable of safely and adequately performing job duties. No employee shall be fit for duty if the employee is under the influence of alcohol or drugs.
3. On-duty employees shall not operate a motor vehicle while under the influence of alcohol or any drug to a degree which renders the person incapable of safely operating the vehicle.
4. No employee suspected of being under the influence of alcohol or drugs shall be allowed to drive to a testing site or to any other location as long as reasonable suspicion exists that the employee is in an impaired state.
5. Employees shall not use, possess, distribute, manufacture, dispense, sell, or purchase any illegal drugs or controlled substances whenever such persons are on Tooele County property, in a county vehicle, in a private vehicle on county business, at a county work site, on county business, or while representing county interests.
6. Employees shall not use or possess prescription drugs unless such drugs are properly prescribed by a licensed physician and are being properly used for the treatment of any illness or injury.
7. Refusing to submit a sample as provided in this policy, attempting to contaminate a specimen or provide a false specimen, interfering with drug or alcohol testing procedures, or violating this policy in any way are grounds for disciplinary action, which may include termination.
8. Tooele County reserves the right to conduct unannounced inspections of county owned or leased property, work stations, equipment, desks, cabinets, etc. and to utilize detection methods necessary for the enforcement of this section, including testing, electronic detection equipment, and trained animals. As a condition of employment, all employees accept that such inspections are reasonable searches not requiring a search warrant. County employees shall not use personal locks on county owned or leased property unless approved by their

department head or elected official. If a personal lock is used, the employee must give access to the property immediately upon request by the department head or elected official. Failure to grant such access may result in removal of the personal lock by force and discipline consistent with the county's policies and procedures. Even when a personal lock is used, employees have no expectation of privacy in county owned or leased property.

D. EXEMPTION: The use or possession of drugs or alcohol will not be considered a violation of this policy where use or possession is permitted by law, or is considered a normal part of job duties and is approved by the department head.

E. PRE-EMPLOYMENT TESTING: All persons selected for hire by Tooele County (excluding elected officials) shall be given a conditional job offer and then must submit to a drug test. Any such persons found to be using an illegal drug or controlled substance, or using a prescription drug without an authorized prescription, or who refuses to take the drug test shall be disqualified from employment.

F. REASONABLE SUSPICION TESTING:

1. Employees having a reasonable suspicion that an employee is under the influence of alcohol or drugs in violation of this policy shall notify the immediate supervisor or department head and provide the information in writing which justifies their suspicion. The department head shall immediately notify the Human Resources Director of the information.
2. Circumstances which may constitute a basis for determining a reasonable suspicion include, but are not limited to:
 - a. a pattern of abnormal or erratic behavior such as a significant change in the quantity or quality of work, unusual mistakes or errors of judgment, or unusual absenteeism;
 - b. a work-related accident, in combination with other factors;
 - c. the direct observation of the employee using drugs or alcohol;
 - d. the employee's possession of alcohol or drugs at a county work site;
 - e. the noticeable presence of physical symptoms of drug or alcohol use such as glassy, blurry, or bloodshot eyes; dilated or pinpoint pupils; hand tremors; flushed or swollen face; the odor of alcohol on the breath; slurred speech; needle marks; hallucinations; unusual euphoria; unusual, aggressive, or bizarre acts; or poor coordination or reflexes; or
 - f. being informed by an employee that another employee is believed to be using or under the influence of drugs or alcohol.

3. In the event that a supervisor has a reasonable suspicion that an employee is impaired by the use of alcohol or drugs in violation of this section, the following steps shall be taken:
 - a. The employee shall be immediately removed from assigned duties and informed by the supervisor that an impairment due to drug or alcohol use is suspected.
 - b. The employee shall be given an opportunity to explain the behavior giving rise to the suspicion.
 - c. The reporting supervisor shall immediately notify the department head or chief deputy of the supervisor's actions and request advice as to steps to be followed.
 - d. The department head or chief deputy, after counsel with and in the presence of the supervisor, shall inform the employee that impairment due to the use of drugs or alcohol is suspected.
 - e. The department head or chief deputy may direct the employee to submit to a drug and alcohol test by a qualified provider to determine whether drugs or alcohol is present in the employee's system. The employee's refusal to submit to the test may be subject to separate appropriate disciplinary action which may include termination.
 - f. If the determination is made by the supervisor and the department head or chief deputy that alcohol or drug use impairment is involved to the extent that the performance of job duties is adversely affected, the employee shall be relieved from duty.
 - g. An employee, upon being confronted by the reasonable suspicion that he or she is under the influence of drugs or alcohol, may request that a drug or alcohol test be conducted by a qualified provider to determine whether drugs or alcohol are present in his or her system if such a test has not already been directed.
 - h. Upon being relieved of duty, appropriate steps shall be taken to discourage the employee from operating a motor vehicle. Reasonable efforts shall be taken to protect the public safety as well as the employee's safety.

G. POST-ACCIDENT TESTING: Employees operating a vehicle who are in an accident where they are cited, where there is an injury, where a vehicle is towed, or which results in the loss of human life must be tested for misuse or abuse of drugs and alcohol.

1. Alcohol tests must be conducted within two hours of an accident. If alcohol tests cannot be conducted within two hours, a written report must be prepared by the employee's supervisor and kept on file stating the reasons the tests were not administered within the two-hour time limit. The alcohol test must then be conducted within eight hours. After eight hours, all attempts to test for alcohol must cease. Drivers shall not use alcohol for eight hours after the accident or until the post-accident test has been completed.

2. Drug tests must be conducted within 32 hours of an accident. If drug tests cannot be conducted within 32 hours, a written report must be prepared by the employee's supervisor and kept on file stating the reasons the tests were not administered within the allowed time limits.
3. Any driver subject to post-accident testing who leaves the scene of an accident before a test is administered or fails to remain readily available for testing may be deemed to have refused to submit to testing.

H. REQUIREMENTS FOR SAFETY SENSITIVE AND PUBLIC SAFETY PERSONNEL:

1. All safety sensitive and public safety personnel must be tested for alcohol and drugs.
2. No safety sensitive or public safety personnel shall report for duty or remain on duty requiring the performance of safety-sensitive functions when such person uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle or perform public safety functions. Tooele County shall not permit the employee to perform or continue to perform a safety-sensitive function if the county has actual knowledge that a such person has used a controlled substance.
3. Notwithstanding the absence of a reasonable suspicion alcohol test, safety sensitive and public safety personnel are prohibited from reporting or remaining on duty requiring the performance of safety-sensitive functions if they have an alcohol concentration of .04 or greater. Such persons are not permitted to use alcohol while driving or for four hours prior to driving. Tooele County, if it has actual knowledge of such alcohol concentration or use, shall not permit such persons to perform safety-sensitive functions. No such persons shall be on duty or operate a commercial vehicle while such persons possess alcohol, unless the alcohol is manifested and transported as part of a shipment. Such persons with a blood alcohol concentration of .04 or greater will be removed from safety-sensitive functions and not allowed to return until successfully completing return-to-duty testing. An alcohol test with results between .02 and .04 will also cause the employee to be removed from safety-sensitive functions, but will allow the employee to return for their next scheduled shift if at least eight hours have elapsed or 24 hours have passed for drivers.
4. Tooele County has the right to require safety sensitive and public safety personnel to report the use of any therapeutic drug they are taking.
5. Safety sensitive and public safety personnel may be allowed to perform job duties while using prescribed medication containing a controlled substance if a physician advises in writing that the substance will not adversely affect their ability to operate a commercial vehicle or perform a safety-sensitive function.

6. The misuse of any over-the-counter drug which is labeled that it may cause drowsiness or a warning to users not to operate heavy machinery is prohibited while driving a commercial or public safety vehicle or while performing a safety-sensitive function.
7. The unauthorized use of another person's prescription drugs while driving a commercial vehicle, performing a safety-sensitive function, or performing public safety functions is prohibited.
8. All prospective employees who will be driving a commercial vehicle while on duty, performing a safety-sensitive function, or will be employed in public safety must be tested for misuse or abuse of the drugs listed in Subsection B.10 and alcohol before starting work. In lieu of this requirement, Tooele County may request detailed written documentation from a previous employer of a prospective employee's drug and alcohol history. Pre-employment testing will occur after a conditional offer of employment. In order to begin work, the test must indicate less than .04 alcohol concentration and negative drug test results.
9. All drivers operating commercial or public safety vehicles who are in an accident when they are cited, where there is an injury, where a vehicle is towed, or which results in the loss of human life must be tested for misuse or abuse of drugs and alcohol. Post-accident testing shall comply with Subsection G of this policy.
10. Random testing is required of safety sensitive and public safety personnel pursuant to the following:
 - a. Fifty percent of all such employees must be tested on a random basis for alcohol and drug misuse or abuse every calendar year and 10% of all such employees must be tested for alcohol every calendar year utilizing a procedure that will:
 - (1) give all such employees an equal chance of being selected for testing;
 - (2) is unannounced; and
 - (3) is evenly spaced throughout the year.
 - b. Alcohol tests must be performed just prior to or immediately following performance of a safety-sensitive or public safety function.
 - c. If employees selected for random testing are off work due to illness, injury, vacation, or similar leave, the supervisor will document it and keep that information in a permanent record.
 - d. A computerized random selection procedure generated by the Human Resource Department will be utilized to select employees for random testing.

11. Reasonable suspicion testing of safety sensitive and public safety personnel will be conducted pursuant to the following:
 - a. Such employees must be tested for drugs or alcohol when a supervisor has reasonable suspicion that they are under the influence of either alcohol or drugs. The supervisor's determination that a reasonable suspicion exists to require the employee to undergo an alcohol or drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.
 - b. The required tests shall not be performed by the same supervisor who determined that reasonable suspicion existed.
 - c. Supervisors shall document the specific facts and observations or symptoms which formed the basis for determination that reasonable suspicion existed.
 - d. Alcohol testing is authorized only when the observations are made just before, during, or just after the employee operates a commercial vehicle or when the employee is working in a public safety function. An employee may be directed by the supervisor to only undergo reasonable suspicion testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.
 - e. Alcohol tests must be conducted within two hours of an accident. If alcohol tests cannot be conducted within two hours, a written report must be prepared by the employee's supervisor and kept on file stating the reasons the tests were not administered within the two-hour time limit. The alcohol test must then be conducted within eight hours. After eight hours, all attempts to test must cease.
 - f. Drug tests must be conducted within 32 hours. If drug tests cannot be conducted within 32 hours, a written report must be prepared by the employee's supervisor and kept on file stating the reasons the tests were not administered within the allowed time limits. A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor who made the observations, within 24 hours of the observed behavior or before the result of the controlled substance test is released, whichever is earlier.
12. Before an employee returns to duty requiring the performance of a safety-sensitive or public safety function after engaging in conduct prohibited by Subsection H regarding alcohol, the employee shall be evaluated by a substance abuse professional, receive proper treatment, if necessary, and undergo an alcohol test with a result indicating an alcohol concentration of less than .02. If the conduct regarded drugs, the employee must receive the evaluation, treatment, and complete a drug test with a verified negative result.

13. Following a return-to-duty test, employees must be tested for drugs and alcohol a minimum of six times in the next twelve months or as many as 30 times in a total of 60 months pursuant to the recommendations of a substance abuse professional.
14. Refusing to submit to testing will prohibit the employee from performing safety-sensitive functions. Refusal is constituted by failure to provide adequate breath without explanation, obscuring testing, failing to sign a test form, leaving the accident scene before testing, and activities which are similar forms of set-back. The consequences for refusal are congruent to testing at .04 grams of alcohol concentration or violating rules.
15. All employees performing in safety-sensitive positions who are subject to drug and alcohol testing shall be given a copy of this policy along with any department or division policy on drug and alcohol testing before any testing is initiated.

I. DEPARTMENT POLICIES: Elected offices, departments, or divisions of the county may adopt policies regarding drug and alcohol testing for sensitive driving functions or those occupations with duties involving public safety, at-risk clientele, or other duties which, by law, are appropriately amendable to random drug testing. Such elected office, department, or division policies shall be drafted to ensure their application to qualified occupations. They ensure that appropriate testing procedures are followed. Any departmental policy must be approved by the commissioner supervising that department and the Human Resource Department.

J. TESTING PROCEDURES:

1. Drug testing is performed using a urine collection method. The county, in its discretion, may perform drug testing by using a blood sample method. Each department whose employee is being tested may send another trusted employee in company with the first to the collection site to minimize the opportunity for sample adulteration. Testing will be conducted under controlled procedures by a qualified technician. Samples collected will be sent for analysis to a drug testing laboratory that follows guidelines set forth by the National Institute of Drug Abuse (NIDA). Split sample testing will be followed. A medical review officer must review and verify all positive drug tests and notify the employee's supervisor and the Human Resources Director. An employee whose test result is positive may submit a written request within ten days to the contracted testing facility for further, independent testing of the original specimen. This independent testing must be done at a NIDA certified laboratory and will be done at the employee's own expense.
2. Alcohol testing will be conducted by a certified breath alcohol technician (BAT), using an evidential breath testing device. It may be done at the scene of an accident providing Tooele County can obtain the results of that testing. The BAT must conduct an initial screening test. If the results are .02 or greater, a confirmation test must be administered. The confirmation test must be conducted at least 15, but no more than 20 minutes following the screening test. The BAT shall transmit all test results to the employee's supervisor and the Human Resources

Director. The County may, in addition or as an alternative, require a blood sample for testing. Use of a urine or blood sample for both the drug testing and alcohol testing is not allowed.

3. Positive test results of alcohol or drug abuse will not be reported until after a confirmatory test has been administered.
4. The department requesting the tests shall pay for all costs of alcohol and drug testing procedures covered under this policy.
5. Time spent participating in drug and alcohol testing procedures covered in this policy will be considered compensable time, whether the employee is on or off duty.
6. All drug or alcohol test sample collection, handling, transportation, and testing under this policy shall be conducted in accordance with the requirements of the Act and other applicable provisions of state or federal statutes or regulations.
7. Any person required to submit to a drug test under this policy may, at such individual's option and expense, submit a second drug test sample for further testing in accordance with the provisions of the Act and within six hours after the first drug test.
8. All drug and alcohol testing and sample collection procedures under this policy shall be performed under reasonable and sanitary conditions and in such a manner as to ensure the privacy of the individual being tested.
9. In all drug testing and sample collection procedures, any transmittal or reporting of test results shall be conducted with due respect for confidentiality. Drug and alcohol test activities and result reports may be made available only to supervisors and management personnel with an immediate need to know. Testing procedures and results may be made available and communicated as needed for the purposes of any disciplinary action or criminal investigation or prosecution.

K. RECORD KEEPING:

1. Records regarding test results are generally considered protected documents under the provisions of the Government Records Access and Management Act, Utah Code Ann. 63-2-304(8), 1953, as amended.
2. All records related to drug and alcohol testing must be maintained in a secured, confidential file and shall not be made part of the personnel file unless the record is used as basis for an involuntary termination of employment or other disciplinary action.
3. Drug and alcohol related testing records for employees who hold a CDL shall be maintained in accordance with the Omnibus Transportation Employee Testing Act of 1991. Alcohol results indicating an alcohol concentration of 0.02 or greater, documentation of refusals for

testing, evidential breath testing calibration documentation, and substance abuse professional's evaluation of employees, and referral documents all must be maintained for five years. Records relating to the collection process and training must be maintained for two years. Negative test results must be kept for one year.

4. Applicants subject to pre-employment drug and alcohol testing may request and receive a copy of the test results within 60 days of hiring.
5. Employees must be notified by their supervisor as soon as possible by telephone and in writing to their last known address of positive test results for random, post-accident, and reasonable suspicion testing, including the drug for which they tested positive.
6. The Human Resources Director will, upon request, submit to the Federal Highway Administration an annual report summarizing the test results under Subsection H.

L. DISCIPLINE AND REHABILITATION:

1. If a confirmed positive drug or alcohol test result indicates a violation of this policy, or if an individual refuses to provide a sample in accordance with this policy, or otherwise violates this policy, that test result, refusal, or violation may be used as a basis for imposing disciplinary action, including termination.
2. Whenever appropriate, rehabilitation of employees who suffer from drug or alcohol use or abuse problems should be pursued. The determination of whether to proceed with discipline, rehabilitation in addition to discipline, or rehabilitation in lieu of discipline for violations of this policy shall be within the discretion of the department head and the county commission. Consultation with the Human Resources Director or an outside service provider is encouraged in making that decision.
3. Alcohol or drug abuse which can be determined through a medical or other recognized professional diagnosis to be a disabling condition will be subject to state and federal disability regulations. Drug or alcohol abuse conditions which can be treated through rehabilitation must be referred to a recognized rehabilitation center. The referral may be voluntary or mandatory at management's discretion and depending on the severity of the abuse.
4. Any rehabilitation in lieu of or in addition to disciplinary action should be undertaken in accordance with the terms of a written memorandum of understanding or agreement between the department head and the employee. The memorandum should set out the expectations which the employee must satisfy, including successful completion within one year of a rehabilitation program at the employee's expense; an appropriate waiver of confidentiality to permit communication between supervisors and rehabilitation service providers, as needed; rehabilitation drug and alcohol testing as determined appropriate which is paid for by the employee; an acknowledgment that failure to successfully complete rehabilitation will lead to appropriate disciplinary action; and such further conditions as may be necessary and appropriate.

5. An employee undergoing rehabilitation may be granted no more than 30 working days of sick leave, annual leave, or leave without pay for inpatient treatment.
6. Nothing in this policy shall be construed as granting a county employee immunity from disciplinary action under other policies or arrest or prosecution by appropriate law enforcement authorities for activities involving drugs or alcohol, which are in violation of state law or city or county ordinance. County employees convicted of the use or possession of illegal drugs in the workplace must report that conviction to their supervisor.

M. SELF-REFERRAL: Employees are encouraged to refer themselves for drug rehabilitation services to be provided by a certified rehabilitation service provider. Employees who enter drug rehabilitation as a self-referral are encouraged to communicate this fact to the supervisor and the department head to determine whether drug use or rehabilitation activities will adversely affect job performance. Supervisors are encouraged to cooperate and work with employees who are undergoing a self-referral rehabilitation in order to assist in a successful completion of that rehabilitation. The status of employees in safety-sensitive positions must be carefully screened in order to determine that their rehabilitation activity shall have no potential adverse effect on job duties.

N. FEDERAL ACT COMPLIANCE:

1. As a condition of employment on any federal contract or grant of a value of \$25,000 or more, each employee shall:
 - a. abide by the terms of this policy; and
 - b. notify the supervisor or department head of any criminal or drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
2. The department head will notify the federal grantor or agency for which a contract is being performed within ten calendar days after receiving notice from the judicial system, through other means, or from an employee performing work under the grant or contract that the employee has so been convicted.

O. POLICY DISTRIBUTION:

1. Each department will distribute this policy to its employees. It must be given to each new employee at the time of hire.
2. Department heads will assure that each employee engaged in the performance of federal contract or grant of a value of \$25,000 or more is given a copy of this policy.
3. Each person receiving this policy must sign a statement certifying they received it.

SECTION 18A
ALCOHOL AND DRUG USE SCREENING, TESTING, AND TREATMENT
FOR COMMERCIAL DRIVER LICENSE HOLDERS

THIS POLICY APPLIES ONLY TO COMMERCIAL DRIVER LICENSE (CDL) HOLDERS AND OTHER DRIVERS AS INDICATED. THESE PROVISIONS ONLY APPLY IF THE CDL IS REQUIRED FOR WORK PURPOSES. THIS POLICY IS IMPLEMENTED TO BE CONSISTENT WITH THE STATUTES, ORDINANCES, AND REGULATIONS OF THE U.S. DEPARTMENT OF TRANSPORTATION (DOT) AND THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA).

A. GENERAL:

1. A complete copy of the anti-drug/alcohol misuse prevention procedures is available to all employees (see Sections 18 and 18A of the Personnel Policies and Procedures Manual). This section only discusses the FMCSA provisions of the mandated drug and alcohol testing regulations and how they relate to employees.
2. The provisions contained in Section 18 are applicable to all county employees, including those who perform safety-sensitive trucking functions covered under Title 49 CFR (Code of Federal Regulations) Part 382.
3. County employees who only perform trucking functions must be aware of the general testing provisions discussed in Section 18 and must be aware of the specific highway regulations as set forth in this policy.
4. The county recognizes that the misuse of drugs and alcohol in today's society is a major problem, which has also found its way into the trucking industry. The purpose of this policy is to reduce highway accidents that result from driver misuse of drugs and alcoholic substances, thereby reducing fatalities, injuries, and property damage. The Department of Transportation, Federal Motor Carrier Safety Administration, has established extensive regulations requiring testing under certain circumstances. In light of the above, the county has adopted this policy to specify the circumstances under which testing may be required, the procedures for conducting such testing, and the methods and procedures for complying with the requirements of the Federal Motor Carrier Safety Administration regulations.
5. The county will implement necessary and reasonable measures to maintain a work environment free of drugs and alcohol. Employees with drug and alcohol misuse problems are strongly encouraged to seek assistance.
6. The county's Designated Employee Representative (DER) is the Human Resources Director.

7. All supervisors who may be involved in determining if reasonable suspicion exists to require an employee to be tested must undergo 60 minutes of training on drug use and 60 minutes of training on alcohol misuse. This training must include physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug abuse (49 CFR §382.603).

B. APPLICABILITY:

1. This information is applicable to every county employee who operates a commercial motor vehicle in interstate or intrastate commerce and is subject to the commercial driver license requirements of 49 CFR Part 382.
2. For purposes of these regulations, the county is considered an employer with regard to the Federal Motor Carrier Safety Administration alcohol regulations. As an employer who employ's drivers, the county must comply with the requirements outlined herein as they apply to the employer and to drivers. All county employees who perform safety-sensitive trucking functions shall be subject to the drug and alcohol misuse testing provisions.
3. The following exceptions apply with regard to the county and their drivers:
 - a. when required to comply with the alcohol and/or controlled substances testing requirements of 49 CFR Part 655 of the Federal Transit Administration regulations; or
 - b. when granted a full waiver from the requirements of the commercial driver license program; or
 - c. when granted an optional State waiver from the requirements of 49 CFR Part 383 of the Federal Motor Carrier Safety Administration regulations; or
 - d. when foreign domiciled operations, with respect to any driver whose place of reporting for duty (home terminal) for commercial motor vehicle transportation services is located outside the territory of the United States.

C. POLICY:

1. Alcohol:
 - a. Prohibited Alcohol - The presence in the body, possession, use, distribution, dispensing, and/or unlawful manufacture of alcohol or alcoholic products is not condoned while conducting county business or while in work areas or county vehicles on or off county premises. No employee will work under the influence of alcohol. It is against county policy for any supervisor/manager that has actual knowledge of a driver using a controlled substance or alcohol to permit the driver to perform or continue to perform safety-sensitive functions.

b. Drivers Subject to Alcohol Testing Covered Under This Policy - County drivers and contract drivers under contract for 90 days or more in any period of 365 days, who perform safety-sensitive trucking functions covered under 49 CFR Parts 382 and 383 and who meet the definition of "Driver" in D.6 of this section are subject to alcohol testing covered under this section.

c. Alcohol Prohibitions

- (1) No driver shall be on-duty, as defined in 49 CFR §395.2, if the driver uses alcohol.
- (2) No driver shall be on-duty, as defined in 49 CFR §395.2, if the driver tests positive for use of alcohol.
- (3) A person who tests positive for the use of alcohol is medically unqualified to operate a commercial motor vehicle and will be not be permitted to perform covered functions and may be subject to disciplinary action up to and including termination.
- (4) A person who refuses to be tested under the policy provisions shall not be permitted to operate a commercial motor vehicle. Such refusal shall be treated as a positive alcohol test and subject the driver to the restrictions contained in paragraph (3) above.
- (5) No employee will consume alcohol four hours prior to performing safety-sensitive functions.
- (6) It is against policy for a driver to consume alcohol within eight hours after an accident that requires a drug and alcohol test.
- (7) It is against policy to allow any driver that has a Breath-Alcohol Content (BrAC) of .02 to .039 grams per 210 liters of breath to operate any vehicle. An employee with a BrAC of .02 to .039 must be removed from duty for one shift or 24 hours. Upon return to work, the employee must have a BrAC below .02.
- (8) An employee with a BrAC of .04 grams per 210 liters of breath or higher will be considered to be in violation of this policy and the Department of Transportation rules and will be subject to disciplinary action. An employee with a BrAC of .04 or higher will be considered to be disqualified from driving.

2. Drugs:

a. Prohibited Drugs - The presence in the body (including the presence as a metabolite), possession, use, distribution, dispensing, and/or unlawful manufacture of prohibited drugs is not condoned while conducting county business or while in work areas or county vehicles on or off county premises. No employee will work under the influence of prohibited drugs. The following drugs are prohibited:

- (1) marijuana;
- (2) cocaine;
- (3) opiates;
- (4) amphetamines; and
- (5) phencyclidine.

b. Drivers Subject to Testing Covered Under This Policy - County drivers and contract drivers under contract for 90 days or more in any period of 365 days who perform safety-sensitive trucking functions covered under 49 CFR Parts 382 and 383 and who meet the definition of "Driver" in D.6. of this section are subject to testing covered under this section.

c. Drug Use Prohibitions

- (1) No driver shall be on-duty, as defined in 49 CFR §395.2, if the driver uses any controlled substance.
- (2) No driver shall be on-duty, as defined in 49 CFR §395.2, if the driver tests positive for use of controlled substances.
- (3) A person who tests positive for the use of a controlled substance, as defined in 49 CFR Part 40, is medically unqualified to operate a commercial motor vehicle and will be suspended without pay.
- (4) A person who refuses to be tested under the policy provisions shall not be permitted to operate a commercial motor vehicle. Such refusal shall be treated as a positive test and subject the driver to the restrictions contained in paragraph (3) above.
- (5) Use of a prescription drug, where the prescribing physician advises that it could impair the ability of an employee to operate in a safety-sensitive manner, must be reported to the employee's supervisor.

D. DEFINITIONS:

1. "**Alcohol**" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
2. "**Alcohol Concentration**" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath.

3. **“Alcohol Testing”** means testing conducted by a Department of Transportation (DOT), certified breath-alcohol technician using a DOT approved breath-testing device.
4. **“Commercial Motor Vehicle”** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - a. has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
 - b. has a gross vehicle weight rating of 26,001 or more pounds; or
 - c. is designed to transport 16 or more passengers, including the driver; or
 - d. is of any size and is used in the transportation of material found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials regulations (49 CFR Part 172, Subpart F).
5. **“Controlled Substance”** means any substance including those assigned by Title 21 United States Code (USC) Section 802 and includes all substances listed on Schedule I. through Schedule V., as they may be revised from time to time (21 CFR Part 1308). Specifically for this policy, a Controlled Substance is one listed in 49 CFR §40.85.
6. **“Driver”** means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers; and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer. For the purposes of pre-employment/pre-duty testing only, the term *driver* includes a person applying to an employer to drive a commercial motor vehicle.
7. **“Drug Testing”** or **“Drug Test”** means scientific analysis for the presence of drugs or their metabolites in the human body.
8. **“DER” (Designated Employee Representative)** is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation process. The individual must be an employee of the county and not be a service agent.
9. **“Employee”** means an individual or officer in the service of the employer for compensation.
10. **“Employer”** means any person (including the United States, a State, District of Columbia, or a political subdivision of a State) who owns or leases a commercial motor vehicle or

assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers, and representatives.

11. **"Interstate Commerce"** means (1) any trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and (2) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation as described above in this definition.
12. **"Medical Review Officer (MRO)"** means a licensed physician responsible for receiving laboratory results generated by an employer drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual confirmed positive test result together with his/her medical history and any other relevant biomedical information.
13. **"Motor Carrier"** means a for-hire motor carrier or a private motor carrier of property. The term "motor carrier" includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.
14. **"On-Duty Time"** means 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. On-duty time shall include:
 - a. all time at a carrier 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 motor carrier;
 - b. all time inspecting equipment as required by 49 CFR §392.7 and §392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
 - c. all driving time as defined in the term "driving time" in this section;
 - d. all time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
 - e. all time loading or unloading a vehicle, supervising, 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 from shipments loaded or unloaded;
 - f. all time spent performing the driver requirements of this section relating to accidents; and
 - g. all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

15. **“Performing (a safety-sensitive function)”** means a driver is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
16. **“Post-Accident Testing”** means testing which is required when there is an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in the following:
 - a. a fatality; or
 - b. an accident where a driver receives a moving violation citation and one of the following occurs:
 - (1) injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (2) one or more motor vehicles incurs 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, and the driver receives a moving citation violation.
17. **“Prospective Employee”** means any individual who has made a written or oral application to become an employee of the county.
18. **“Reasonable Suspicion”** or **“For Cause Testing”** means an articulated belief, based on recorded specific facts and reasonable inference drawn from those facts, that an employee is in violation of this policy.
19. **“Random Testing”** means unannounced drug testing of an employee who was selected by using a method uninfluenced by any personal characteristic other than job category.
20. **“Refusal”** means that a driver:
 - a. fails to show up for any test within a reasonable time after being directed to do so by the employer or to remain at the testing site until the testing process is complete. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a Consortium/Third Party Administrator;
 - b. fails to provide a urine specimen for any drug test require by the Act;
 - c. in the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen as set forth in 49 CFR §40.67(k) and §40.69(g);

- d. fails to provide a sufficient amount of urine when directed, unless it has been determined through a required medical evaluation, that there was an adequate medical explanation for the failure;
 - e. fails to undergo an additional medical evaluation as directed by the Medical Review Officer (MRO) as part of the verification process or as directed by the Designated Employee Representative (DER) concerning the evaluation of the shy bladder procedures in 49 CFR Part 40, Subpart I;
 - f. fails to cooperate with any part of the testing process; or
 - g. fails or declines to take a second test the employer has directed following a negative dilute result.
21. **“Sample”** means any sample of urine, blood, breath, or saliva used for drug and/or alcohol testing.
22. **“Safety-Sensitive Position”** means all employees who possess Commercial Driver’s Licenses (CDL’s) and who operate a vehicle with the following characteristics:
- a. has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - b. has a gross vehicle weight rating of 26,001 or more pounds;
 - c. is designed to transport 16 or more passengers, including the driver; or
 - d. is of any size and is used in the transportation of material found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placard under the Hazardous Materials regulations (49 CFR Part 172, Subpart F).

E. ALCOHOL TESTING:

1. Pre-Employment (Background Check Only – Alcohol Testing is Optional).

The county must obtain and review the information listed below from any employer for whom the driver performed safety-sensitive functions in the previous two years. The information must be obtained and reviewed no later than 30 days after the driver performs safety-sensitive functions (driving). The request should include:

- a. information of the driver’s alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated;

- b. information on the driver's controlled substances test in which a positive results was indicated; and
- c. any refusal to submit to a required alcohol or controlled substance test.

The county must provide to each of the driver's previous employers of the past two years a written authorization from the driver for the release of the required information. The county may not use a driver to perform safety-sensitive functions if the employer obtains information indicating the driver has tested positive for controlled substances, tested at or above 0.04 breath alcohol concentration, or refused to test unless the employer has evidence the driver has been evaluated by a SAP, completed any required counseling, passed a return-to-duty test, and been subject to follow-up testing.

2. Random Testing.

- a. Employees in "covered" positions are subject to random testing at any time with no advance notice. The random selection process will ensure each employee the same fair and equal chance of being selected.
- b. An employee randomly selected will be notified by his/her supervisor of the selection and instructed to immediately go to the designated alcohol-testing site.
- c. Random testing will be conducted monthly and will be administered at a 10% annualized rate. This means that the total number of tests conducted during any 12-month period will be equal to at least 10% of the total pool of covered employees.

3. Reasonable Suspicion.

- a. An employee/driver shall submit to testing, for reasonable suspicion, for the use of alcohol when requested to do so by the county.
- b. The employee conduct must be witnessed by at least one supervisor and county official. The supervisor or witnesses must have received training in the specific identification of actions, appearance, behavior, or conduct of a commercial motor vehicle driver, which are indicative of alcohol use.
- c. The supervisor shall ensure that the employee is transported to the alcohol-testing site.
- d. If an employee refuses to submit to the alcohol test or attempts to leave county premises and is impaired to the extent that he/she would present a danger to either him/herself or others, local law enforcement should be contacted immediately by the county representative.

- e. While waiting for an employee's alcohol test results, that employee will be removed from performing safety-sensitive functions and, if the test results are positive, may be subject to further disciplinary action up to and including termination. Specific disciplinary actions are described in detail in the end of this policy.

4. Post-Accident Testing.

- a. A driver shall submit to an alcohol test within two hours (but not later than eight hours) of a determination by the county officials that a test is required and that circumstances indicate the accident is reportable under the FMSCA regulations. It must be determined that the driver received a citation for a moving traffic violation arising from the accident. A DOT reportable accident is defined in 49 CFR §382.303 (Federal Motor Carrier Safety Regulations Pocketbook, Form 2133) as "an occurrence involving a commercial motor vehicle operating on a public road in commerce." The following table notes when a post-accident test is required to be conducted.

Type of Accident Involved	Citation Issued to the CMV Driver	Test Must Be Performed by Employer
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

- b. A driver who is seriously injured and cannot be tested at the time of the accident should provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there was any alcohol in his/her system.
- c. The results of a breath or blood test for the use of alcohol conducted by Federal, State, or Local law enforcement officials having independent authority to conduct such tests, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State, or Local requirements. County officials shall obtain such test results.
- d. The county shall provide drivers with necessary information and procedures so that the driver is able to meet the requirements as set forth in this section.

- e. While waiting for an employee's alcohol test results, that employee will be removed from performing safety-sensitive functions and, if the test results are positive, may be subject to further disciplinary action up to and including termination. Specific disciplinary actions are described in detail in the end of this policy.
- f. Employee Responsibility: As soon as practicable following an accident as defined in this policy, the employee shall make every attempt to contact his/her supervisor and the substance abuse program administrator.
 - (1) The employee will be given instructions for obtaining alcohol and substance abuse testing.
 - (2) An employee who is subject to post-accident testing must remain available for testing, or county may consider the employee to have refused to submit to testing.
 - (3) The employee subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he/she submits to an alcohol test, whichever comes first.
- g. County Responsibility: Upon receiving a report of an accident, the county shall test the employee (if not a fatality) for alcohol and controlled substances as soon as practicable.

5. Return to Duty.

The requirements for return-to-duty testing must be performed in accordance with 49 CFR Part 40, Subpart O.

6. Follow-up Testing.

The requirements for follow-up testing must be performed in accordance with 49 CFR Part 40, Subpart O.

F. DRUG TESTING:

- 1. Dilute Specimens – If the county receives a test result, which is verified positive, but dilute, it will be treated as a positive test. If the county receives a test, which is negative and dilute, it will retest the employee (one time). The employee will be instructed to immediately report to the collector and will be given minimal notice of the need for recollection. Such collections will not be observed.
- 2. Invalid Tests – If the county receives a test result which is determined to be invalid (49 CFR §40.23), it will immediately have the employee retested. The employee will be given no notification of the need to retest. The test will be an observed specimen collection. No action will be taken on the first test result.

3. Types of Drug Testing:

a. Pre-Employment Testing.

- (1) The county shall require a driver-applicant who they intend to hire or use to be tested for the use of controlled substances as a pre-qualification condition.
- (2) A driver-applicant shall submit to controlled substance testing as a pre-qualification condition.
- (3) Prior to collection of a urine sample, a driver-applicant shall be notified that the sample will be tested for the presence of controlled substances.
- (4) The county may use a driver who is a regularly employed driver of another motor carrier without complying with paragraph a.(1) above, if the driver meets the requirements of 49 CFR §391.65, "Drivers Furnished by Other Motor Carriers."
- (5) The county may use a driver who is not tested by the county provided:
 - (a) that the driver has participated in a drug testing program that meets the requirements under this section within the previous 30 days; and
 - (b) while participating in that program was either:
 - (i) tested for controlled substances within the past six months (from the date of application with the county); or
 - (ii) participated in the drug-testing program for the previous 12 months (from the date of application with the county).
- (6) When the county exercises either paragraph (4) or (5) above, the county will contact the controlled substances testing program in which the driver participates or participated and will obtain the following information:
 - (a) name and address of the program;
 - (b) verification that the driver participates or participated in the program;
 - (c) verification that the program conforms to 49 CFR Part 40;
 - (d) verification that the driver is qualified under the rules of this section, including that the driver has not refused to be tested for controlled substances;
 - (e) the date the driver was last tested for controlled substances; and

(f) the results, positive or negative, of any test taken.

b. Random Testing.

- (1) Employees in “covered” positions are subject to random testing at any time with no advance notice. The random selection process will ensure each employee the same fair and equal chance of being selected.
- (2) An employee randomly selected will be notified by his/her supervisor of the selection and instructed to immediately go to the designated collection site.
- (3) Random testing will be conducted monthly and will be administered at a 50% annualized rate. This means that the total number of tests conducted during any 12-month period will be equal to at least 50% of the total pool of covered employees.

c. Reasonable Cause.

- (1) An employee/driver shall submit to testing, for reasonable cause, for the use of controlled substances when requested to do so by the county.
- (2) The conduct should be witnessed by at least two supervisors or county officials, if feasible. If not feasible, only one supervisor or county official need witness the conduct. The witness or witnesses must have received training in the identification of actions, appearance, or conduct of a commercial motor vehicle driver, which are indicative of the use of a controlled substance.
- (3) The supervisor shall transport the employee to the collection site.
- (4) If an employee refuses to submit to drug testing or attempts to leave the county premises and is impaired, in the opinion of a trained supervisor, to the extent that he/she would present a danger to either him/herself or others, local law enforcement should be contacted immediately by the supervisor.
- (5) While waiting for an employee’s drug test results, that employee will be removed from their “covered” position until the Medical Review Officer (MRO) confirms that the employee tested negative for drugs.

d. Post-Accident Testing.

- (1) A driver shall provide a urine sample to be tested for the use of controlled substances as soon as possible, but no later than 32 hours, after a reportable accident if the driver of the commercial vehicle received a citation for a moving traffic violation arising from the accident. A DOT reportable accident is defined in 49 CFR §382.303 (Federal Motor Carrier Safety Regulations Pocketbook, Form 2133) as “an occurrence

involving a commercial motor vehicle operating on a public road in commerce.” The following table notes when a post-accident test is required to be conducted.

Type of Accident Involved	Citation Issued to the CMV Driver	Test Must Be Performed by Employer
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

- (2) A driver who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.
- (3) The county shall provide drivers with necessary information and procedures so that the driver is able to meet the requirements as set forth in this section.
- (4) While waiting for an employee’s drug test results, that employee will be removed from their “covered” position until the Medical Review Officer (MRO) confirms that the employee tested negative for drugs.

e. Return to Duty.

The requirements for return-to-duty testing must be performed in accordance with 49 CFR Part 40, Subpart O.

f. Follow-up Testing.

The requirements for follow-up testing must be performed in accordance with 49 CFR Part 40, Subpart O.

G. DISCIPLINARY ACTION:

1. Violation of Policy.

- a. Any driver with a verified positive pre-employment drug test will not be hired.

- b. Any driver with a verified positive drug test will be suspended from a safety-sensitive duty and, if not terminated, will be required to complete a treatment and counseling program that meets the requirements of the DOT for returning to duty (**at the employee's own expense**). The employee will have to take and pass a return-to-duty test and will be subject to a minimum of six unannounced tests in the first 12 months of returning to duty.
- c. Any driver with a positive alcohol test of 0.02-0.039, if not terminated, will be suspended without pay for one work shift or 24 hours and will be required to have a negative alcohol test before returning to a covered position.
- d. Any employee who consumes alcohol or drugs while "on-duty" will be terminated.
- e. Any employee with an alcohol level of 0.04 or greater, if not terminated, will be required to meet the return-to-duty requirements listed in subsection (b).
- f. Any attempt to adulterate, substitute, tamper, or refuse to test will be treated as a positive test.
- g. If a confirmed positive drug or alcohol test result indicates a violation of this policy, or if an individual refuses to provide a sample in accordance with this policy, or otherwise violates this policy, that test result, refusal, or violation may be used as a basis for imposing disciplinary action, including termination.

2. Refusal, Adulterate, or Substitute a Test.

- a. No employee shall adulterate, substitute, or refuse a test or to submit to a random, reasonable-suspicion, post-accident, or follow-up alcohol test.
- b. An employee who refuses a return-to-duty test is not in violation of the policy; however, such refusal will result in not allowing the individual to perform safety-sensitive functions and may result in disciplinary action up to and including termination of employment.
- c. Employees who: 1) without a legitimate reason fail to report to the alcohol testing site; or 2) without a valid medical reason fail to provide an adequate breath sample under this policy will be suspended without pay and be subject to disciplinary action up to and including termination of employment.

3. Return to Duty.

- a. An employee testing positive for alcohol may be returned to a "safety-sensitive" position after a return-to-duty test with an alcohol concentration of less than 0.02.

- b. After returning to work, the employee will be subject to: 1) unannounced follow-up testing, as determined by the SAP and the county officials; and 2) the other required types of testing, including random testing.

4. Contesting a Test Result.

An employee will have 72 hours from the time it is reported to the county to contest a positive drug test result.

H. ALCOHOL TESTING OVERVIEW:

Alcohol Testing Procedures. All collection, transportation, testing procedures, test evaluation measures, quality control measures, substance abuse professionals, record keeping, and reporting of alcohol test results will conform to the Department of Transportation regulations as set forth in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

I. RECORD RETENTION:

1. Record Keeping.

- a. The county will retain the following records for a period of at least five years:
 - (1) records of driver alcohol test results with results indicating a level of greater than 0.02;
 - (2) documentation of driver refusal to take required alcohol tests; and
 - (3) driver referral and evaluation records.
- b. The county will retain records regarding the alcohol collection process for two years.
- c. The county will retain test records of drivers with alcohol concentrations of less than 0.02 for a minimum of one year.
- d. The county will retain records confirming supervisory and employee training for at least three years.

2. Driver Qualification Files.

These records are subject to the county divided record keeping authority and are to be maintained at authorized record keeping locations. The following is a list of information to be maintained in these files regarding employee alcohol abuse:

- a. the name of the employee submitted to a alcohol test;

- b. date the alcohol test was conducted;
- c. location of the alcohol test;
- d. test category; and
- e. results of the alcohol test.

3. Record Confidentiality.

- a. Except for the breath alcohol technician, substance abuse professional, and designated county personnel with a need to know, the county will not release information regarding an employee's alcohol use or rehabilitation/treatment records without the express written consent of the tested employee. The only exception is when information must be released, regardless of consent, to the Federal Motor Carrier Safety Administrator to examine all records related to the administration and results of controlled substance testing performed under this program.
- b. To maintain confidentiality, written records regarding an employee's alcohol misuse and rehabilitation will be stored in a secured location. The employee's alcohol testing and/or rehabilitation/treatment records will not be made a part of the employee's personnel file.

J. RESPONSIBILITY:

- 1. Reservation of Rights - The county reserves the right to interpret, modify, and/or revise this policy in whole or in part without notice. Nothing in this policy is to be construed as an employment contract nor does this alter an employee's employment at-will status. The employee remains free to resign his/her employment at any time for any or no reason, without notice. Similarly, the county reserves the right to terminate any employee's employment, for any or no reason, without notice.
- 2. Compliance with All Laws - This policy will be amended from time to time to comply with changes in Federal and State Laws.

This policy is a general summary of the county's Anti-Drug/Alcohol Misuse Prevention Policy for Commercial Drivers. IF THERE IS ANY QUESTION OR CONFLICT BETWEEN WHAT IS SAID IN THIS POLICY AND THE LANGUAGE IN THE DOT REGULATIONS AS CODIFIED AT 49 CFR PARTS 40 AND 382, THE DOT REGULATIONS WILL PREVAIL.

SECTION 18
ALCOHOL AND DRUG USE SCREENING, TESTING, AND TREATMENT

A. POLICY STATEMENT:

1. Tooele County recognizes there must exist a healthy and productive work force within the county, safe working conditions free from the effects of drugs and alcohol, and high quality services rendered to the public. These circumstances are vital to the functioning of county government, the safety of its employees, and the well-being of the general public.
2. The use of illegal drugs and alcohol and abuse of legal medications on the job creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, decreased employee morale, and a decline in the quality of services rendered to the public. Such use and abuse may be in violation of the criminal laws of the State of Utah. It greatly increases the potential legal liability of the county for accidents and misconduct of its employees.
3. In balancing the interests of the county and its employees and volunteers with the interests and welfare of the general public, the county commission finds it is in the best interest of all parties to implement a drug-free workplace policy in accordance with the Local Governmental Entity Drug-Free Workplace Enabling Act, Section 34-41-101, et seq., Utah Code Ann., 1953, as amended, the Federal Drug-Free Workplace Act of 1988, 41- U.S.C. 701 et seq.; and the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102-143, Title V. Accordingly, this policy addresses alcohol and drug screening, testing, and treatment for all county employees, including those who hold a commercial driver license (CDL). Employees who hold a commercial driver license (CDL) as a condition of their employment are also subject to Section 18A of the Tooele County Personnel Policies and Procedures.
4. In adopting this policy, it is the intent and objective of the county commission to be as comprehensive as possible in addressing the issues of safety, confidentiality, privacy, alcohol and drug use education treatment, and the appropriate use of alcohol and drug testing as described in this policy.

B. DEFINITIONS:

As used in this section:

1. "Abuse" or "misuse" means the use of either an illegal substance or controlled substance obtained without a prescription for other than medicinal purposes; the inappropriate use of drugs obtained by prescription; or the inappropriate use of legally obtained alcohol products or over-the-counter medications.
2. "Act" means the Local Governmental Entity Drug-Free Workplace Enabling Act, Utah Code Ann. 34-41-101, et seq., 1953, as amended.

3. "Alcohol" means any or all alcoholic beverages, including hard liquor, beer or wine.
4. "Alcohol test" means the scientific analysis for the presence of alcohol in the human body.
5. "Commercial driver license" or "CDL" means a license required to operate a commercial vehicle.
6. "Commercial vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - a. has a gross vehicle weight rating of more than 26,000 pounds, including a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - b. is designed to transport 16 or more passengers including the driver; or
 - c. is of any size, is used to transport hazardous materials, and is required to be placarded.
7. "Confirmation test" means:
 - a. for alcohol testing, a second test following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration; and
 - b. for drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.
8. "Driver" means any person who operates a commercial vehicle.
9. "Drug" means any substance recognized as a drug in the Utah Controlled Substances Act, Title 58, Chapter 37, Utah Code Ann. 1953 as amended, or the Federal Controlled Substances Act, Title II, Pub. L. 91-513.
10. "Drug testing" or "drug test" means the scientific analysis for the presence of drugs or their metabolites in the human body. Tooele County will drug test for drugs including, but not limited to, the following:
 - a. marijuana (THC);
 - b. cocaine;
 - c. opiates;
 - d. phencyclidine (PCP);

e. amphetamines, including methamphetamines;

f. barbiturates;

g. benzodiazepines;

h. propoxphene;

i. methadone;

j. hydrocodone; and

k. oxycodone.

11. "Employee" means every person working for Tooele County, whether compensated or not, including volunteers, full and part-time, temporary, merit, merit exempt and community service workers.
12. "Medical review officer" means a licensed physician who has knowledge of substance abuse disorders and has the training to interpret and evaluate test results.
13. "Prospective employee" means any person who has made written or oral application to become an employee of the county.
14. "Reasonable suspicion" means an articulated belief based on recorded specific facts and reasonable inferences drawn from those facts.
15. "Rehabilitation testing" means unannounced but preselected drug or alcohol testing done as part of a program of counseling, education and treatment of an employee.
16. "Safety sensitive" means any employee whose job is described as safety sensitive or performs any act which is safety sensitive, such as operating a commercial vehicle or heavy equipment.
- ~~16~~17. "Safety-sensitive function" means anytime a CDL holder is driving a commercial vehicle, is ready to drive a commercial vehicle, or is immediately available to drive as an employment responsibility. It also means any employee performing an act which is safety sensitive, such as operating a commercial vehicle or heavy equipment.
- ~~17~~18. "Sample" means any sample of urine or breath to be used for drug or alcohol testing.
- ~~18~~19. "Screening test" means:
 - a. in alcohol testing, an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system; and

b. in drug testing, an immunoassay screen to eliminate “negative” urine specimens from further consideration.

†920. “Substance abuse professional” means a licensed physician, psychologist, social worker, employee assistance professional, or addiction counselor trained in the diagnosis and treatment of drug and alcohol abuse.

C. USE OF ALCOHOL OR DRUGS:

1. No employee shall drink alcohol while on Tooele County property, in a county vehicle, in a private vehicle on county business, at a county work site, on county business, or while representing county interests.
2. No employee shall report for a regularly scheduled duty shift or be on duty while under the influence of alcohol or any drug to the extent that it adversely affects the proper performance of the employee’s job or renders the employee incapable of safely and adequately performing job duties. No employee shall be unfit for duty because of being if the employee is under the influence of alcohol or drugs.
3. On-duty employees shall not operate a motor vehicle while under the influence of alcohol or any drug to a degree which renders the person incapable of safely operating the vehicle.
4. No employee suspected of being under the influence of alcohol or drugs shall be allowed to drive to a testing site or to any other location as long as reasonable suspicion exists that the employee is in an impaired state.
5. Employees shall not use, possess, distribute, manufacture, dispense, sell, or purchase any illegal drugs or controlled substances whenever such persons are on Tooele County property, in a county vehicle, in a private vehicle on county business, at a county work site, on county business, or while representing county interests.
6. Employees shall not use or possess prescription drugs unless such drugs are properly prescribed by a licensed physician and are being properly used for the treatment of any illness or injury.
7. Refusing to submit a sample as provided in this policy, attempting to contaminate a specimen or provide a false specimen, interfering with drug or alcohol testing procedures, or violating this policy in any way are grounds for disciplinary action, which may include termination.
8. Tooele County reserves the right to conduct unannounced inspections of county owned or leased property, work stations, equipment, desks, cabinets, etc. and to utilize detection methods necessary for the enforcement of this Section, including testing, electronic detection equipment, and trained animals. As a condition of employment, all employees accept that such inspections are reasonable searches not requiring a search warrant. County employees shall not use personal locks on county owned or leased property unless approved by their

department head or elected official. If a personal lock is used, the employee must give access to the property immediately upon request by the department head or elected official. Failure to grant such access may result in removal of the personal lock by force and discipline consistent with the county's policies and procedures. Even when a personal lock is used, employees have no expectation of privacy in county owned or leased property.

D. EXEMPTION: The use or possession of drugs or alcohol will not be considered a violation of this policy where use or possession is permitted by law, or is considered a normal part of job duties and is approved by the department ~~here~~ head.

E. PRE-EMPLOYMENT TESTING: All persons selected for hire by Tooele County (excluding elected officials) shall be given a conditional job offer; and then ~~they~~ must submit to a drug test. Any such persons found to be using an illegal drug or controlled substance, or using a prescription drug without an authorized prescription, or who refuses to take the drug test shall be disqualified from employment.

F. REASONABLE SUSPICION TESTING:

1. Employees having a reasonable suspicion that an employee is under the influence of alcohol or drugs in violation of this policy shall notify the immediate supervisor or department head and provide the information in writing which justifies their suspicion. The department head shall immediately notify the Human Resources Director of the information.
2. Circumstances which may constitute a basis for determining a reasonable suspicion include, but are not limited to:
 - a. a pattern of abnormal or erratic behavior such as a significant change in the quantity or quality of work, unusual mistakes or errors of judgment, or unusual absenteeism;
 - b. a work-related accident, in combination with other factors;
 - c. the direct observation of the employee using drugs or alcohol;
 - d. the employee's possession of alcohol or drugs at a county work site;
 - e. the noticeable presence of physical symptoms of drug or alcohol use such as glassy, blurry, or bloodshot eyes; dilated or pinpoint pupils; hand tremors; flushed or swollen face; the odor of alcohol on the breath; slurred speech; needle marks; hallucinations; unusual euphoria; unusual, aggressive, or bizarre acts; or poor coordination or reflexes; or
 - f. being informed by an employee that another employee is believed to be using or under the influence of drugs or alcohol.
3. In the event that a supervisor has a reasonable suspicion that an employee is impaired by the use of alcohol or drugs in violation of this section, the following steps shall be taken:

- a. The employee shall be immediately removed from assigned duties and informed by the supervisor that an impairment due to drug or alcohol use is suspected.
- b. The employee shall be given an opportunity to explain the behavior giving rise to the suspicion.
- c. The reporting supervisor shall immediately notify the department head or chief deputy of the supervisor's actions and request advice as to steps to be followed.
- d. The department head or chief deputy, after counsel with and in the presence of the supervisor, shall inform the employee that impairment due to the use of drugs or alcohol is suspected.
- e. The department head or chief deputy may direct the employee to submit to a drug and alcohol test by a qualified provider to determine whether drugs or alcohol is present in the employee's system. The employee's refusal to submit to the test may be subject to separate appropriate disciplinary action which may include termination.
- f. If the determination is made by the supervisor and the department head or chief deputy that alcohol or drug use impairment is involved to the extent that the performance of job duties is adversely affected, the employee shall be relieved from duty.
- g. An employee, upon being confronted by the reasonable suspicion that he or she is under the influence of drugs or alcohol, may request that a drug or alcohol test be conducted by a qualified provider to determine whether drugs or alcohol are present in his or her system if such a test has not already been directed.
- h. Upon being relieved of duty, appropriate steps shall be taken to discourage the employee from operating a motor vehicle. Reasonable efforts shall be taken to protect the public safety as well as the employee's safety.

G. POST-ACCIDENT TESTING: Employees operating a vehicle who are in an accident where they are cited, where there is an injury, where a vehicle is towed, or which results in the loss of human life must be tested for misuse or abuse of drugs and alcohol.

1. Alcohol tests must be conducted within two hours of an accident. If alcohol tests cannot be conducted within two hours, a written report must be prepared by the employee's supervisor and kept on file stating the reasons the tests were not administered within the two-hour time limit. The alcohol test must then be conducted within eight hours. After eight hours, all attempts to test for alcohol must cease. Drivers shall not use alcohol for eight hours after the accident or until the post-accident test has been completed.
2. Drug tests must be conducted within 32 hours of an accident. If drug tests cannot be conducted within 32 hours, a written report must be prepared by the employee's supervisor

and kept on file stating the reasons the tests were not administered within the allowed time limits.

3. Any driver subject to post-accident testing who leaves the scene of an accident before a test is administered or fails to remain readily available for testing may be deemed to have refused to submit to testing.

H. REQUIREMENTS FOR ~~COMMERCIAL DRIVER LICENSE LICENSEES~~ SAFETY SENSITIVE AND PUBLIC SAFETY PERSONNEL:

1. All ~~commercial driver licensees~~ safety sensitive and public safety personnel must be tested for alcohol and the following drugs:

a. ~~marijuana (THC);~~

~~— b. cocaine;~~

~~— c. opiates;~~

~~— d. phencyclidine (PCP); and~~

~~— e. amphetamines, including methamphetamines;~~

2. No ~~commercial driver licensees~~ safety sensitive or public safety personnel shall report for duty or remain on duty requiring the performance of safety-sensitive functions when such person uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle or perform public safety functions. Tooele County shall not permit the employee to perform or continue to perform a safety-sensitive function if the county has actual knowledge that a such person has used a controlled substance.

3. Notwithstanding the absence of a reasonable suspicion alcohol test, ~~CDL drivers~~ safety sensitive and public safety personnel are prohibited from reporting or remaining on duty requiring the performance of safety-sensitive functions if they have an alcohol concentration of .04 or greater. Such persons are not permitted to use alcohol while driving or for four hours prior to driving. Tooele County, if it has actual knowledge of such alcohol concentration or use, shall not permit such persons to perform safety-sensitive functions. No such persons shall be on duty or operate a commercial vehicle while such persons possess alcohol, unless the alcohol is manifested and transported as part of a shipment. Such persons with a blood alcohol concentration of .04 or greater will be removed from safety-sensitive functions and not allowed to return until successfully completing return-to-duty testing. An alcohol test with results between .02 and .04 will also cause the employee to be removed from safety-sensitive functions, but will allow the employee to return for their next scheduled shift if at least eight hours have elapsed or 24 hours have passed for drivers.

4. Tooele County has the right to require ~~a commercial driver licensees~~ safety sensitive and public safety personnel to report the use of any therapeutic drug they are taking.
5. ~~Commercial driver licensees~~ Safety sensitive and public safety personnel may be allowed to perform job duties while using prescribed medication containing a controlled substance if a physician advises in writing that the substance will not adversely affect their ability to operate a commercial vehicle or perform a safety-sensitive function.
6. The misuse of any over-the-counter drug which is labeled that it may cause drowsiness or a warning to users not to operate heavy machinery is prohibited while driving a commercial or public safety vehicle or while performing a safety-sensitive function.
7. The unauthorized use of another ~~employee's~~ person's prescription drugs while driving a commercial vehicle, performing a safety-sensitive function, or performing public safety functions is prohibited.
8. All prospective employees who will be driving a commercial vehicle while on duty, performing a safety-sensitive function, or who will be employed in public safety must be tested for misuse or abuse of the drugs listed in Subsection H. 1. B.10 and alcohol before starting work. In lieu of this requirement, Tooele County may request detailed written documentation from a previous employer of a prospective employee's drug and alcohol history. Pre-employment testing will occur after a conditional offer of employment. In order to begin work, the test must indicate less than .04 alcohol concentration and negative drug test results.
9. All drivers operating commercial or public safety vehicles who are in an accident when they are cited, where there is an injury, where a vehicle is towed, or which results in the loss of human life must be tested for misuse or abuse of drugs and alcohol. Post-accident testing shall comply with ~~the following:~~ Subsection G of this policy.
 - ~~a. Alcohol tests must be conducted within two hours of an accident. If they cannot be conducted within two hours, a written report must be prepared by the employee's supervisor and kept on file stating the reasons the tests were not administered within the two-hour time limit. The alcohol test must then be conducted within eight hours. After eight hours, all attempts to test must cease. Drivers shall not use alcohol for eight hours after the accident or until the post-accident test has been completed.~~
 - ~~b. Drug tests must be conducted within 32 hours of an accident. If drug tests cannot be conducted within 32 hours, a written report must be prepared by the employee's supervisor and kept on file stating the reasons the tests were not administered within the allowed time limits.~~
 - ~~c. Any driver subject to post-accident testing who leaves the scene of an accident before a test is administered or fails to remain readily available for testing may be deemed to have refused to submit to testing.~~

10. Random testing is required of ~~commercial driver licensees~~ safety sensitive and public safety personnel pursuant to the following:
 - a. Fifty percent of all such employees must be tested on a random basis for alcohol and drug misuse or abuse every calendar year and 10% of all such employees must be tested for alcohol every calendar year utilizing a procedure that will:
 - (1) give all such employees an equal chance of being selected for testing;
 - (2) is unannounced; and
 - (3) is evenly spaced throughout the year.
 - b. Alcohol tests must be performed just prior to or immediately following performance of a safety-sensitive or public safety function.
 - c. If employees selected for random testing are off work due to illness, injury, vacation, or similar leave, the supervisor will document it and keep that information in a permanent record.
 - d. A computerized random selection procedure generated by the ~~office of personnel management~~ Human Resource Department will be utilized to select employees for random testing.
11. Reasonable suspicion testing of ~~commercial driver licensees~~ safety sensitive and public safety personnel will be conducted pursuant to the following:
 - a. Such employees must be tested for drugs or alcohol when a supervisor has reasonable suspicion that they are under the influence of either alcohol or drugs. The supervisor's determination that a reasonable suspicion exists to require the employee to undergo an alcohol or drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.
 - b. The required tests shall not be performed by the same supervisor who determined that reasonable suspicion existed.
 - c. Supervisors shall document the specific facts and observations or symptoms which formed the basis for determination that reasonable suspicion existed.
 - d. Alcohol testing is authorized only when the observations are made just before, during, or just after the employee operates a commercial vehicle or when the employee is working in a public safety function. An employee may be directed by the supervisor to only undergo reasonable suspicion testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

- e. Alcohol tests must be conducted within two hours of an accident. If alcohol tests cannot be conducted within two hours, a written report must be prepared by the employee's supervisor and kept on file stating the reasons the tests were not administered within the two-hour time limit. The alcohol test must then be conducted within eight hours. After eight hours, all attempts to test must cease.
 - f. Drug tests must be conducted within 32 hours. If drug tests cannot be conducted within 32 hours, a written report must be prepared by the employee's supervisor and kept on file stating the reasons the tests were not administered within the allowed time limits. A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor who made the observations, within 24 hours of the observed behavior or before the result of the controlled substance test is released, whichever is earlier.
12. Before an employee returns to duty requiring the performance of a safety-sensitive or public safety function after engaging in conduct prohibited by Subsection H regarding alcohol, the employee shall be evaluated by a substance abuse professional, receive proper treatment, if necessary, and undergo an alcohol test with a result indicating an alcohol concentration of less than .02. If the conduct regarded drugs, the employee must receive the evaluation, treatment, and complete a drug test with a verified negative result.
 13. Following a return-to-duty test, employees must be tested for drugs and alcohol a minimum of six times in the next twelve months or as many as 30 times in a total of 60 months pursuant to the recommendations of a substance abuse professional.
 - ~~14. All supervisors who may be involved in determining if reasonable suspicion exists to require an employee to be tested must undergo 60 minutes of training on drug use and 60 minutes of training on alcohol misuse. This training must include physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug abuse.~~
 - ~~15. All commercial driver licensees and public safety personnel must undergo 60 minutes of training on drug and alcohol misuse and abuse prior to their participation in the alcohol and drug testing program.~~
 - ~~16~~14. Refusing to submit to testing will prohibit the employee from performing safety-sensitive functions. Refusal is constituted by failure to provide adequate breath without explanation, obscuring testing, failing to sign a test form, leaving the accident scene before testing, and activities which are similar forms of set-back. The consequences for refusal are congruent to testing at .04 grams of alcohol concentration or violating rules.
 - ~~17~~15. All employees performing in safety-sensitive positions who are subject to drug and alcohol testing shall be given a copy of this policy along with any department or division policy on drug and alcohol testing before any testing is initiated.

I. DEPARTMENT POLICIES: Elected offices, departments, or divisions of the county may adopt policies regarding drug and alcohol testing for sensitive driving functions or those occupations with duties involving public safety, at-risk clientele, or other duties which, by law, are appropriately amendable to random drug testing. Such elected office, department, or division policies shall be drafted to ensure their application to qualified occupations. They ensure that appropriate testing procedures are followed. Any departmental policy must be approved by the commissioner supervising that department and the Human Resource Department.

J. TESTING PROCEDURES:

1. Drug testing is performed using a urine collection method. The county, in its discretion, may perform drug testing by using a blood sample method. Each department whose employee is being tested may send another trusted employee in company with the first to the collection site to minimize the opportunity for sample adulteration. Testing will be conducted under controlled procedures by a qualified technician. Samples collected will be sent for analysis to a drug testing laboratory that follows guidelines set forth by the National Institute of Drug Abuse (NIDA). Split sample testing will be followed. A medical review officer must review and verify all positive drug tests and notify the employee's supervisor and the ~~director of personnel management~~ Human Resources Director. An employee whose test result is positive may submit a written request within ten days to the contracted testing facility for further, independent testing of the original specimen. This independent testing must be done at a NIDA certified laboratory and will be done at the employee's own expense.
2. Alcohol testing will be conducted by a certified breath alcohol technician (BAT), using an evidential breath testing device. It may be done at the scene of an accident providing Tooele County can obtain the results of that testing. The BAT must conduct an initial screening test. If the results are .02 or greater, a confirmation test must be administered. The confirmation test must be conducted at least 15, but no more than 20 minutes following the screening test. The BAT shall transmit all test results to the employee's supervisor and the ~~director of personnel management~~ Human Resources Director. The County may, in addition or as an alternative, require a blood sample for testing. Use of a urine or blood sample for both the drug testing and alcohol testing is not allowed.
3. Positive test results of alcohol or drug abuse will not be reported until after a confirmatory test has been administered.
4. The department requesting the tests shall pay for all costs of alcohol and drug testing procedures covered under this policy.
5. Time spent participating in drug and alcohol testing procedures covered in this policy will be considered compensable time, whether the employee is on or off duty.
6. All drug or alcohol test sample collection, handling, transportation, and testing under of this policy shall be conducted in accordance with the requirements of the Act and other applicable provisions of state or federal statutes or regulations.

7. Any person required to submit to a drug test under this policy may, at such individual's option and expense, submit a second drug test sample for further testing in accordance with the provisions of the Act and within six hours after the first drug test.
8. All drug and alcohol testing and sample collection procedures under this policy shall be performed under reasonable and sanitary conditions and in such a manner as to ensure the privacy of the individual being tested.
9. In all drug testing and sample collection procedures, any transmittal or reporting of test results shall be conducted with due respect for confidentiality. Drug and alcohol test activities and result reports may be made available only to supervisors and management personnel with an immediate need to know. Testing procedures and results may be made available and communicated as needed for the purposes of any disciplinary action or criminal investigation or prosecution.

K. RECORD KEEPING:

1. Records regarding test results are generally considered protected documents under the provisions of the Government Records Access and Management Act, Utah Code Ann. 63-2-304(8), 1953, as amended.
2. All records related to drug and alcohol testing must be maintained in a secured, confidential file and shall not be made part of the personnel file unless the record is used as basis for an involuntary termination of employment or other disciplinary action.
3. Drug and alcohol related testing records for their employees who hold a CDL shall be maintained in accordance with the Omnibus Transportation Employee Testing Act of 1991. Alcohol results indicating an alcohol concentration of 0.02 or greater, documentation of refusals for testing, evidential breath testing calibration documentation, and substance abuse professional's evaluation of employees, and referral documents all must be maintained for five years. Records relating to the collection process and training must be maintained for two years. Negative test results must be kept for one year.
4. Applicants subject to pre-employment drug and alcohol testing may request and receive a copy of the test results within 60 days of hiring.
5. Employees must be notified by their supervisor as soon as possible by telephone and in writing to their last known address of positive test results for random, post-accident, and reasonable suspicion testing, including the drug for which they tested positive.
6. ~~The director of personnel management~~ Human Resources Director will, upon request, submit to the Federal Highway Administration an annual report summarizing the test results under Subsection H.

L. DISCIPLINE AND REHABILITATION:

1. If a confirmed positive drug or alcohol test result indicates a violation of this policy, or if an individual refuses to provide a sample in accordance with this policy, or otherwise violates this policy, that test result, refusal, or violation may be used as a basis for imposing disciplinary action, including termination.
2. Whenever appropriate, rehabilitation of employees who suffer from drug or alcohol use or abuse problems should be pursued. The determination of whether to proceed with discipline, rehabilitation in addition to discipline, or rehabilitation in lieu of discipline for violations of this policy shall be within the discretion of the department head and the county commission. Consultation with the ~~director of personnel management~~ Human Resources Director or an outside service provider is encouraged in making that decision.
3. Alcohol or drug abuse which can be determined through a medical or other recognized professional diagnosis to be a disabling condition will be subject to state and federal disability regulations. Drug or alcohol abuse conditions which can be treated through rehabilitation must be referred to a recognized rehabilitation center. The referral may be voluntary or mandatory at management's discretion and depending on the severity of the abuse.
4. Any rehabilitation in lieu of or in addition to disciplinary action should be undertaken in accordance with the terms of a written memorandum of understanding or agreement between the department head and the employee. The memorandum should set out the expectations which the employee must satisfy, including successful completion within one year of a rehabilitation program at the employee's expense; an appropriate waiver of confidentiality to permit communication between supervisors and rehabilitation service providers, as needed; rehabilitation drug and alcohol testing as determined appropriate which is paid for by the employee; an acknowledgment that failure to successfully complete rehabilitation will lead to appropriate disciplinary action; and such further conditions as may be necessary and appropriate.
5. An employee undergoing rehabilitation may be granted no more than 30 working days of sick leave, annual leave, or leave without pay for inpatient treatment.
6. Nothing in this policy shall be construed as granting a county employee immunity from disciplinary action under other policies or arrest or prosecution by appropriate law enforcement authorities for activities involving drugs or alcohol, which are in violation of state law or city or county ordinance. County employees convicted of the use or possession of illegal drugs in the workplace must report that conviction to their supervisor.

M. SELF-REFERRAL: Employees are encouraged to refer themselves for drug rehabilitation services to be provided by a certified rehabilitation service provider. Employees who enter drug rehabilitation as a self-referral are encouraged to communicate this fact to the supervisor and the department head to determine whether drug use or rehabilitation activities will adversely affect job performance. Supervisors are encouraged to cooperate and work with employees who are

undergoing a self-referral rehabilitation in order to assist in a successful completion of that rehabilitation. The status of employees in safety-sensitive positions must be carefully screened in order to determine that their rehabilitation activity shall have no potential adverse effect on job duties.

N. FEDERAL ACT COMPLIANCE:

1. As a condition of employment on any federal contract or grant of a value of \$25,000 or more, each employee shall:
 - a. abide by the terms of this policy; and
 - b. notify the supervisor or department head of any criminal or drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
2. The department head will notify the federal grantor or agency for which a contract is being performed within ten calendar days after receiving notice from the judicial system, through other means, or from an employee performing work under the grant or contract that the employee has so been convicted.

O. POLICY DISTRIBUTION:

1. Each department will distribute this policy to its employees. It must be given to each new employee at the time of hire.
2. Department heads will assure that each employee engaged in the performance of federal contract or grant of a value of \$25,000 or more is given a copy of this policy.
3. Each person receiving this policy must sign a statement certifying they received it.