

DRUG AND ALCOHOL TESTING POLICY TOWN OF MARLBORO VERMONT

Adopted May 24, 2011

A. PURPOSE

The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transportation industry. Specifically, the Federal Motor Carriers Administration (FMCSA) of the U.S. Department of Transportation has published 49 CFR Part 382, as amended, that mandate urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibit performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

Any provisions set forth in this policy that are included under the sole authority of Town of Marlboro and are not provided under the authority of the above named Federal regulations are underlined.

B. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full-or part-time) when performing any company-related business.

C. DEFINITIONS

Accident means an occurrence associated with the operation of a revenue service vehicle even when not in revenue service in revenue service or which requires a Commercial Drivers License to operate, if as a result--

- (1) An individual dies,
- (2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- (3) One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage that precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple

repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

Adulterated specimen. A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

Canceled Test is a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither positive nor negative.

Commerce means: 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 trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described above.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle-

Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or

Is designed to transport 16 or more passengers, including the driver; or

Is of any size and is used in the transportation of materials 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).

Covered Employee means an employee who performs a safety-sensitive function including an applicant or transferee whom will be hired to perform a safety-sensitive function (See Attachment A for a list of covered employees).

Medical Review Officer (MRO) means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative test result for a drug test means a verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended. An alcohol concentration of less than 0.02 BAC is a negative test result.

Negative Dilute Drug test is a specimen showing creatinine level of greater than 5mg/dl and less than 20 mg/dl, the employer may require the donor to submit to another specimen collection. The re-collection cannot be done under direct observation. If the employer adopts a policy of re-collection for negative-dilute results, all employees must be treated the same. However, the employer may elect to treat different types of tests differently (e.g. re-collect for pre-employment tests, but not for random tests). If the second test is also negative-dilute, the employer must accept that result and cannot continue re-collections. The second test is the test of record. An applicant/employee's refusal to submit to a recollection for a negative-dilute result is a refusal to test.

Non-negative test result is a test result found to be adulterated, substitute, invalid, or positive for drug/drug metabolites.

Non-negative results are considered a positive test or refusal to test if MRO cannot determine legitimate medical explanation

Observed Collection means the donor will provide his or sample under the direct observation of either a collector or another same gender individual. The employee must raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer, by turning around, that they do not have a prosthetic device. After the observer has determined that the employee does not have such a device, you may permit the employee to return clothing to its proper position for observed urination.

Positive test result for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

Prohibited drug means marijuana, cocaine, opiates, amphetamines, phencyclidine or MDMA (ecstasy) at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

Safety-sensitive function 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. Safety-sensitive functions shall include:

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Shy Bladder refers to any time a safety-sensitive employee is unable to provide a 45ml. sample of urine in a single void within a three hour time period.

Shy Lung refers to any time a safety-sensitive employee is unable to provide an adequate sample of breath for alcohol testing.

Substance Abuse Professional (SAP) means a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified

by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Substituted specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Test Refusal The following are considered a refusal to test if the employee:

- Fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer
- Fails to remain at the testing site until the testing process is complete;
- Fails to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations;
- In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
- Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- Fails or declines to take a second test the employer or collector has directed you to take;
- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" procedures
- Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).
- If the MRO reports that there is verified adulterated or substituted test result,

Verified negative test means a drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (DHHS).

Verified positive test means a drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

Validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

D. EDUCATION AND TRAINING

Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 382 and 40. In addition, all covered employees will sign a certification that they have received a copy of this policy.

All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in Attachment B of this policy.

E. PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following.

(1) Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), cocaine and MDMA (ecstasy) as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy

Federal Motor Carrier Safety Administration drug testing regulations (49 CFR Part 382) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

(2) Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a Town of Marlboro supervisor and the employee is required to

provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

(3) Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited.

F. PROHIBITED CONDUCT

- (1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.
- (2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities.
- (3) The company shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.
- (4) Each covered employee is prohibited from reporting to work or remaining On duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.
- (5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- (6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- (7) Consistent with the Drug-free Workplace Act of 1988, all Town of Marlboro employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including company premises, vehicles, while in uniform or while on Town of Marlboro business.

G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the Town of Marlboro's management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q.10 of this policy.

H. TESTING REQUIREMENTS

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49CFR part 40. All covered employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy. All covered employees who have tested positive for drugs or alcohol on a random, reasonable suspicion, or post-accident will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

A drug test can be performed any time a covered employee is on duty. An alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function

All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with Town of Marlboro. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q.3 of this policy.

Any covered employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection.

Verification of the above listed actions will be considered a test refusal and will result in the employees' removal from duty and disciplined as defined in Section Q.3 of this policy. Refusal can also include an inability to provide a sufficient urine specimen or breath sample without a valid medical explanation, as well as a verbal or written declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test within the specified time frame.

I. DRUG TESTING PROCEDURES

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities, which have been approved, by the U.S. Department of Health and Human Service (DHHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a DHHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

The test results from the DHHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substituted, or adulterated test result.

The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result.

If no legitimate medical explanation is found, the test will be verified positive or a refusal to test and reported to the Town of Marlboro Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM and no further action will be taken. If the test is invalid without a medical explanation, a retest will be conducted under direct observation.

Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be

tested. The split sample test must be conducted at a second DHHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to document able facts that were beyond the control of the employee.

Town of Marlboro will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, however Town of Marlboro will seek reimbursement for the split sample test from the employee. The payment will be deducted from the employee's next paycheck. The minimum charge for split specimen testing is \$175.00.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct Town of Marlboro to retest the employee under direct observation.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year.

Observed collections

Consistent with 49 CFR Part 40 Collection under direct observation (by a person of the same gender) with no advance notice will occur if:

(1) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to Town of Marlboro that there was not an adequate medical explanation for the result; or

(2) The MRO reports to Town of Marlboro that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed.

(b) Town of Marlboro direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test. Effective August 31, 2009.

(c) The collector must immediately conduct a collection under direct observation if:

- They are directed by the Town of Marlboro to do so; or
- (2) The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen or
 - (3) The temperature on the original specimen was out of range
 - (4) The original specimen appeared to have been tampered with.

J. ALCOHOL TESTING PROCEDURES

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device, which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee.

The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q.4-5 of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least twenty-four hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q.9 of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

The Company affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

K. PRE-EMPLOYMENT TESTING

All applicants for covered safety-sensitive positions shall undergo urine drug testing and breath alcohol testing prior to hire or transfer into a covered position that requires the performance of a safety-sensitive function. Town of Marlboro will not conduct pre employment alcohol testing.

- (1) All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test.
- (2) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR part 40 as amended and a negative pre-employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
- (3) When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q.4-5 and 9 herein.
- (4) If a pre-employment/pre-transfer test is canceled, Town of Marlboro will require the applicant to take and pass another pre-employment drug test.

An exception for pre-employment controlled substances testing; the employer is not required to administer a controlled substances pre-employment test. If the driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and while participating in that program, either was tested for controlled substances within the past 6 months (from the date of application with the employer) or participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

L. REASONABLE SUSPICION TESTING

All Town of Marlboro covered employees will be subject to a reasonable suspicion drug and/or alcohol test when there are reasons to believe that drug or alcohol use is impacting job performance and safety. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one supervisor who is trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

Town of Marlboro shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into

a situation, which might endanger the physical safety of those, present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q.4-5 and 9 of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q.3 of this policy.

A written record of the observations, which led to a drug/alcohol test, based on reasonable suspicion shall be prepared and signed by the supervisor making the observation prior to the release of the test results. This written record shall be submitted to the Town of Marlboro management and shall be attached to the forms reporting the test results.

M. POST-ACCIDENT TESTING

All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a commercial motor vehicle. A post-accident test will be conducted if an accident results in the following conditions outlined in the following chart:

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.

If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record.

If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a

controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered.

N. RANDOM TESTING

All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

- (1) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year.
- (2) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations.
The current random testing rate for drugs established by FMCSA equals fifty percent of the number of covered employees in the pool and the random testing rate for alcohol established by FMCSA equals ten percent of the number of covered employees in the pool.
- (3) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection and notification of the individuals who are to be tested.
- (4) Covered employees that fall under the Federal Motor Carriers Administration regulations will be included in one random pool maintained separately from the testing pool of employees that are included solely under Town of Marlboro authority.
- (5) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. . Testing can occur during the beginning, middle, or end of an employee's shift.
- (6) Employees are required to proceed immediately to the collection site upon notification of their random selection.

O. RETURN-TO-DUTY TESTING

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP should schedule the return-to-duty test only when the employee is known to be drug-and alcohol-free and there is no risk to public safety. Effective August 31, 2009 all Return to Duty Testing **MUST** be performed under direct observation.

P. FOLLOW-UP TESTING

Covered employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing. Effective August 31, 2009 all Follow-up Testing **MUST** be performed under direct observation.

Q. RESULT OF DRUG/ALCOHOL TEST

Any covered employee that has a verified positive drug or alcohol test will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP.

A positive drug and/or alcohol test will also result in disciplinary action as specified herein.

- (1) As soon as practicable after receiving notice of a verified positive drug test result, a confirmed alcohol test result, or a test refusal, the Town of Marlboro Drug and Alcohol Program Manager will contact the employee's supervisor to have the employee cease performing any safety-sensitive function.
- (2) The employee shall be referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.
- (3) Refusal to submit to a drug/alcohol test shall be considered a positive test result and a direct act of insubordination and shall result in termination. A test refusal includes the following circumstances.
 - (a) A covered employee who consumes alcohol within eight (8) hours following involvement in an accident without first having submitted to post-accident drug/alcohol tests.
 - (b) A covered employee who leaves the scene of an accident without a legitimate explanation prior to submission to drug/alcohol tests.
 - (c) A covered employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution of a urine specimen.
 - (d) A covered employee who provides an insufficient volume of urine specimen or breath sample without a valid medical explanation.
 - (e) A verbal or written declaration, obstructive behavior, refusal to sign the required DOT drug and/or alcohol testing forms, or physical absence resulting in the inability to conduct the test within the specified time frame.
 - (f) A covered employee whose urine sample has been verified by the MRO as substitute or adulterated.
 - (g) A covered employee fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer.
 - (h) A covered employee fails to remain at the testing site until the testing process is complete;
 - (i) A covered employee fails to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations;
 - (j) A covered employee fails to permit the observation or monitoring of a specimen collection
 - (k) A covered employee fails or declines to take a second test the employer or collector has directed you to take;
 - (l) A covered employee fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification

process, or as directed by the DER as part of the "shy bladder" procedures

(m) A covered employee fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).

4) For the first instance of a verified positive test from a sample submitted as the result of a random, or reasonable suspicion drug/alcohol test (≥ 0.04 BAC), disciplinary action against the employee may include:

(c) TERMINATION OF EMPLOYMENT and provided with a list of Substance Abuse Professionals.

(b) If employment is not terminated than consistent with DOT regulations Town of Marlboro will immediately remove the safety-sensitive employee from his/her safety-sensitive duties and referral to a Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;

(c) Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Town of Marlboro employment.

(d) Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy;

(e) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.

(f) A periodic unannounced follow-up drug/alcohol test, which results in a verified positive shall result in termination from Town of Marlboro employment.

(5) The second instance of a verified positive drug or alcohol (≥ 0.04 BAC) test result from a sample submitted under the random, reasonable suspicion, return-to-duty, or follow-up drug/alcohol test provisions herein shall result in termination from Town of Marlboro employment.

(6) A verified positive post-accident drug and/or alcohol (≥ 0.04) test shall result in termination.

(7) An alcohol test result of ≥ 0.02 to ≤ 0.039 BAC shall result in the removal of the employee from duty for not less than twenty four hours or the remainder of the work day whichever is longer. If the

employee has an alcohol test result of ≥ 0.02 to ≤ 0.039 two or more times within a six month period, the employee will be removed from duty and referred to the SAP for assessment and treatment consistent with Section Q.9 of this policy.

- 8) The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. The employee will be permitted to take accrued sick leave or administrative leave to participate in the SAP prescribed treatment program. If the employee has insufficient accrued leave, the employee shall be placed on leave without pay until the SAP has determined that the employee has successfully completed the required treatment program and releases him/her to return-to-duty. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.
- 9) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:
 - (a) Mandatory referral to a Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;
 - (b) Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Town of Marlboro employment.
 - ◆ Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy;
 - (c) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.
 - (d) A self-referral or management referral to the SAP that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q.4-5 of this policy.
 - (e) Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q.4-5 of this policy.

- (f) A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Town of Marlboro
- (g) A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
- (10) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.
- (11) Negative – Dilute drug test results for all testing circumstances will be required to submit to one retest. Refusal to submit to the retest will be considered a positive test and a direct act of insubordination and shall result in termination of employment.

R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 382 for a positive test or test refusal are not subject to arbitration.

S. PROPER APPLICATION OF THE POLICY

The, Town of Marlboro, is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

T. INFORMATION DISCLOSURE

Drug/alcohol testing records shall be maintained by the Town of Marlboro Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

- (1) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications.
- (2) Records of a verified positive drug/alcohol test result shall be released to the Town of Marlboro Drug and Alcohol Program

- Manager, Department Supervisor and Personnel Manager on a need to know basis.
- (3) Records will be released to a subsequent employer only upon receipt of a written request from the employee.
 - (4) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test.
 - (5) Records will be released to the National Transportation Safety Board during an accident investigation.
 - (6) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
 - (7) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Town of Marlboro or the employee.
 - (8) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 necessary legal steps to contest the issuance of the order will be taken

U. SYSTEM CONTACTS

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

Drug and Alcohol Program Manager:

Name: BRIAN TALLMADGE

Title:

Address: 144 Barefoot Road, Concord, VT 05824

Telephone Number: (802)695-2526

Medical Review Officer

Name: Dr. Richard Brody, MD

Title: MRO

Address: Occu-Health, 200 North Ave. E. Longmeadow, MA 01028

Telephone Number: (413) 525-6003

Substance Abuse Professional(s)

Name: Ed Barker, Morrisville, VT

Telephone Number: (802)888-3600

DHHS Certified Laboratory

Name: CLINICAL REFERENCE LABORATORY

Address: LENEXA, KANSAS

Telephone Number: (800) 445-6917

This Policy was adopted by the Town of Marlboro, Vermont

On, May 24, 2011

Attachment A

Town of Marlboro

Covered Classifications

Title CDL Holders Testing Authority – FMCSA

Attachment B Alcohol Fact Sheet

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

Signs and Symptoms of Use

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

Health Effects

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6 ounce glass]) over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed “alcoholic”)
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related).

Social Issues

- Two-thirds of all homicides are committed by people who drink prior to the crime.
 - Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
 - Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
 - The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
 - Forty percent of family court cases are alcohol problem related.
 - Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
 - More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.
-
- The Annual Toll
 - 24,000 people will die on the highway due to the legally impaired driver.
 - 12,000 more will die on the highway due to the alcohol-affected driver.
 - 15,800 will die in non-highway accidents.
 - 30,000 will die due to alcohol-caused liver disease.
 - 10,000 will die due to alcohol-induced brain disease or suicide.
 - Up to another 125,000 will die due to alcohol-related conditions or accidents.
-
- Workplace Issues
 - it takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
 - Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
 - A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.

Attachment C
Minimum Thresholds

	INITIAL TEST CUTOFF LEVELS (ng/ml)
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	2,000
Phencyclidine	25
Amphetamines	1,000

	CONFIRMATORY TEST CUT/OFF LEVELS (ng/ml)
	15
Marijuana metabolites	
Cocaine metabolites	150
Opiates:	
Morphine	2,000
Codeine	2,000
Phencyclidine	25
Amphetamines:	
Amphetamines	500
Methamphetamine	500

An additional test for 6-Acetylmorphines (6-AM) will be conducted for opiate positives above the initial test cutoff concentration of 2000 ng/ml. There is no legitimate medical explanation for 6-AM positive tests.