



**Town of Proctor**

**Controlled Substance and Alcohol Testing Policy  
for Employees with a Commercial Drivers License**

**Adopted: June 28, 2010  
Effective: June 28, 2010**

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## Purpose Statement

WHEREAS the Town of Proctor

- Is required by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles; and
- Values its employees and recognizes each employee's need for a safe and healthy work environment and is committed to maintaining a safe workplace for its drivers and other users of the roadways that is free from illegal controlled substance use and the misuse of alcohol; and
- Recognizes employees who use illegal controlled substances and abuse alcohol tend to be less productive, less reliable, more prone to accidents, and more prone to absenteeism, all of which potentially will result in increased accidents, costs, and risk to the Employer, its employees, and the general public.

Accordingly, the Town of Proctor has amended its **“Controlled Substance and Alcohol Testing Policy”** in compliance with the following laws and regulations.

## Regulatory References

U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration Regulations (FMCSA), 49 CFR Parts 382 et al as originally published February 15, 1994, **Revised August 1, 2002**, and including any subsequent amendments (including Parts 383, 392 and 395 as applicable).

U.S. Department of Health and Human Services (DHHS) and the Substance Abuse and Mental Health Services Administration (SAMHSA) Regulations, 49 CFR Part 40, as originally published December 1, 1989, **Revised August 1, 2001**, and including any subsequent amendments.

**PREEMPTION** of State and Local Laws:

- (a) Except as provided in (b) below, Federal regulations preempt any State or local law, rule, regulation, or order to the extent that:

Compliance with both the State or local requirement and Federal regulations is not possible; or  
Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any regulatory requirement.

- (b) The Federal Regulations shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

Except as expressly provided above, nothing in these regulations shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

## **Section I. Applicability**

The drivers subject to drug and alcohol testing under this Policy are those drivers required to have a Commercial Driver's License (CDL), and operate a Commercial Motor Vehicle (CMV) which is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the CMV:

- 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
- has a gross vehicle weight rating of 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, 49 CFR part 172, Subpart F.

(Includes the Licencia Federal de Conductor (Mexico) requirements; and the commercial driver license requirements of the Canadian National Safety Code)

**Exceptions:** 49 CFR part 382 shall not apply to employers and their drivers: (1) Required to comply with the alcohol and/or controlled substances testing requirements of 49 CFR part 655 (Federal Transit Administration alcohol and controlled substances testing regulations); or (2) Who a State must waive from the requirements of 49 CFR part 383. These individuals include active military personnel; members of the Reserves; and members of the National Guard on active duty, including personnel on full-time National Guard training and National Guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel; or (3) Who a State has, at its discretion, exempted from the requirements of 49 CFR part 383.

## **Section II. Effective Dates**

Originally Adopted: TBD

## **Section III. Definitions**

The following terms and abbreviations used in this Program are further defined below:

<b>BAT</b>	Breath Alcohol Technician	<b>EBT</b>	Evidential Breath Testing Device
<b>CDL</b>	Commercial Driver's License	<b>FMCSA</b>	Federal Motor Carriers Safety Administration
<b>CFR</b>	Code of Federal Regulations	<b>MRO</b>	Medical Review Officer
<b>CMV</b>	Commercial Motor Vehicle	<b>SAP</b>	Substance Abuse Professional
<b>DER</b>	Designated Employer Representative	<b>STT</b>	Screening Test Technician
<b>DHHS</b>	Dept. of Health & Human Services		
<b>DOT</b>	Dept. of Transportation		

For purposes of this Program, the following definitions are adopted.

**ACCIDENT** means an occurrence involving a commercial motor vehicle:

1. Resulting in the death of a human being (surviving driver(s) must be tested);

2. When the operator receives a citation under state, or local law for a moving traffic violation arising from the accident, AND the accident involved:
  - a. Bodily injury to a person, who, as a result of the injury immediately receives medical treatment away from the scene of the accident; or
  - b. One or more vehicles incur disabling damage as a result of the occurrence and are transported away from the scene by a tow truck or other motor vehicle.

**ADULTERATED SPECIMEN** means a specimen 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. If a specimen is reported by the laboratory to the Medical Review Officer to have been adulterated or substituted, the Medical Review Officer will offer the employee/applicant the right to have his or her split specimen tested. If the Medical Review Officer reports that the employee/applicant has a verified adulterated or substituted test result, it is considered a refusal to take a drug test. A refusal to take a drug test results in consequences specified under DOT Federal Motor Carrier Safety Administration (FMCSA) regulations.

**ALCOHOL** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

**ALCOHOL CONCENTRATION** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test in part 40.

**BREATH ALCOHOL TECHNICIAN (BAT)** means a trained and certified individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath-testing device (EBT).

**CANCELED OR INVALID TEST** means a test that is determined to be invalid by the Medical Review Officer in the instance of a drug test or by a BAT in the instance of an EBT alcohol test.

**CHAIN OF CUSTODY/ PROCEDURES;** account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.

**CFR** means the Code of Federal Regulations.

**COLLECTION SITE** means a place where individuals present themselves for the purpose of providing a specimen of urine to be analyzed for the presence of drugs or a breath or saliva specimen *to* determine alcohol concentration.

**COMMERCE** means:

1. Any trade, 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 described in #1 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:

1. 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
2. Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or
3. Is designed to transport 16 or more passengers, including the driver; or
4. 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

**CONFIRMATION (or confirmatory) DRUG TESTING** means a second analytical procedure performed by the laboratory on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite which is independent of the initial (screening) test, and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Currently, a confirmation drug test is conducted by gas chromatography/mass spectrometry (GC/MS).

**CONFIRMATION (OR CONFIRMATORY) VALIDITY TEST** means a second test performed on a urine specimen to further support a validity test result.

**COUNSELING, TREATMENT, OR REHABILITATION PROGRAM** is determined by a substance abuse professional (SAP) knowledgeable in substance abuse disorders based upon, but not limited to, an evaluation of the nature and extent of an individual's substance abuse, use, or problem, and includes a recommended treatment program, if applicable.

**DER-DESIGNATED EMPLOYER REPRESENTATIVE** is an employer or an individual(s) identified by the employer: (1) as able to receive communications and test results directly from medical review officers, BATs, screening test technicians, collectors, and substance abuse professionals; (2) who is authorized to take immediate action to remove employees from safety-sensitive functions; and (3) to make required decisions in the testing and evaluation process. Service agents cannot serve as DERs.

**DHHS** means the U.S. Department of Health and Human Services Regulations, 49 CFR Part 40 entitled, "Mandatory Guidelines for Federal Workplace Drug and Alcohol Testing Programs." These regulations provide a system of checks and balances to eliminate errors and the possibility of false positive results, etc., during collection and analysis of specimens, and review of results by a Medical Review Officer.

**DILUTE SPECIMEN** means a urine specimen whose creatinine and specific gravity values are diminished by the employee (donor) through the introduction of fluid (usually water) into the specimen either directly or through excessive consumption of fluids.

**DIRECT OBSERVATION** means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing as defined herein.

**DISABLING DAMAGE** means damage that precludes departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repairs.

1. Includes damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

2. Excludes:

- a. Damage, which can be remedied temporarily at the scene of the accident without special tools or parts.
- b. Tire disablement without other damage even if no spare tire is available.
- c. Headlight or taillight damage.
- d. Damage to turn signals, horn, or windshield wipers, which make them inoperative.

**DRIVER/EMPLOYEE** means any person who operates a CMV and is designated in FMCSA regulations as subject to drug and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in FMCSA regulations and applicants for employment subject to pre-employment testing. This definition includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased/contract drivers and independent, owner operator contractors who are either directly employed by, or under lease to a company, or who operate a commercial motor vehicle at the direction of or with the consent of a company.

**EMPLOYER** means the Town of Proctor who employs one or more employees subject to DOT/FMCSA agency regulations requiring compliance with 49 CFR Part 382 and 49 CFR Part 40. As used in this Policy the term means the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the Town of Proctor who take personnel actions resulting from violations of this Program. "Employer" is used interchangeably with "Company" in this policy. Service agents are not employers for the purposes of DOT/FMCSA regulations.

**EVIDENTIAL BREATH TESTING DEVICE (EBT)** means an EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List" (CPL) as conforming with the model specifications available from NHTSA, Office of Alcohol and State Programs, and approved by DOT. This definition includes any subsequent amendments to the CPL of evidential and non-evidential screening or breath measurement devices approved by DOT.

**LABORATORY** means a testing laboratory, which is certified by the Dept. of Health and Human Services under the National Laboratory Certification Program, Substance Abuse and Mental Health Services Administration.

**MEDICAL REVIEW OFFICER (MRO)** means a licensed physician (doctor of medicine or osteopathy), responsible for receiving laboratory results generated by this program; who has knowledge of substance abuse disorders, and has appropriate training to interpret and evaluate a donor's confirmed laboratory positive or "unsuitable" drug test result together with the donor's medical history and any other relevant biomedical information. The MRO is also required to have a working knowledge of the DOT FMCSA regulations applicable to the employer for whom he/she evaluates drug test results.

**ON DUTY** means any period during which a driver is actually performing, ready to perform, or is immediately available to perform, including four (4) hours prior to reporting to perform a safety sensitive function. On duty time also means any of those on duty functions set forth in Part 395.2 "On Duty" paragraphs (1) through (7) of 49 CFR, and also listed under the definition "safety-sensitive functions" in this Policy.

**PERFORMING A SAFETY SENSITIVE FUNCTION** means any period in which the driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

**POLICY** means the initiative related to the Controlled Substance and Alcohol Testing Policy of the Town of Proctor for drivers in compliance with U.S. Department of Transportation and Federal Motor Carrier Safety Administration regulations for drug and alcohol testing.

**PRIMARY SPECIMEN (in drug testing Bottle A)** is the urine specimen that is opened and tested by the original laboratory to determine whether the employee has drug(s) or drug metabolite(s) in his/her system. The primary specimen is distinguished from the split specimen, defined in this section.

**RANDOM** means that drug and alcohol tests are unannounced and every person subject to testing will have an equal chance with all other persons of being selected for testing. There is never a “safe period” for any driver in the scheduling of random tests. The odds of being selected to provide a specimen are equal for all drivers on each collection/testing day, regardless of whether or not the driver was previously selected for testing.

**REASONABLE SUSPICION** means the employer believes the actions, appearance, or conduct of a driver are indicative of the use of a chemical substance(s), including alcohol. Such beliefs are based on the actions, appearance, odor or conduct of a driver while performing, immediately available to perform, or immediately after performing a safety sensitive function.

**REFUSAL TO TEST (DRUG OR ALCOHOL)** means that a donor refuses to submit to testing when directed; fails to provide an adequate specimen for testing without a valid medical explanation after receiving notice of the requirement to be tested; or, engages in conduct that clearly obstructs the testing process.

**SAFETY SENSITIVE FUNCTION** means any of the on-duty functions listed below:

1. All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
2. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at anytime.
3. All time spent at the driving controls of a commercial motor vehicle.
4. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
5. All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle or in giving or receiving receipts for shipments loaded or unloaded.
6. All time spent performing the covered person’s requirements associated with an accident.
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**SAMHSA** means the U.S. Substance Abuse and Mental Health Services Administration, formerly the National Institute on Drug Abuse (NIDA). SAMHSA was established by the U.S. Department of Health and Human Services (DHHS), to regulate laboratories performing analytical drug tests on human body fluids.

**SCREENING TEST (OR INITIAL TEST)** (1) in drug testing, a laboratory test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs; (2) in alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

**SERVICE AGENTS** are all parties who provide services to employers in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collection site personnel, BATs and STTs, laboratories, MRO's, substance abuse professionals (SAP's), consortia, and third party administrators.

**SHY BLADDER** means a donor is unable to provide a sufficient quantity of urine for a drug test. When this occurs, the donor is offered up to 40 ounces of fluid over a three (3) hours period to try to obtain an adequate urine specimen for testing in one void. If the donor is still unable to provide a sufficient quantity of urine, the donor must be evaluated by a physician, acceptable to the MRO, to determine if there is a medical explanation for the inability to provide the specimen.

**SHY LUNG** means an individual is unable to provide a sufficient amount of breath to perform an evidential breath test for alcohol. When this occurs, a physician must evaluate the donor, approved by the Employer, to determine if there is a medical explanation for the inability to provide sufficient breath.

**SPECIMEN** means a body fluid that is analyzed to detect the presence of a drug or determine the alcohol concentration level. This Program may be amended to include specimens other than urine, breath, or saliva that are approved by the U.S. Department of Health and Human Services for federal workplace drug testing programs and the U.S. Department of Transportation.

**SPLIT SPECIMEN (Bottle B)** is a part of the urine specimen that is sent to the first laboratory and retained unopened, and which will be transported to a second laboratory in the event that the employee requests it be tested following a verified positive, adulterated, or substituted test of the primary specimen.

**STAND DOWN** means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results. Employers are prohibited from standing down employees unless a waiver has been requested and granted by FMCSA, in accordance with 49 CFR Part 40.21. An employer does not need a 40.21 waiver to take other actions involving the performance of safety sensitive functions.

**SUBSTANCE ABUSE PROFESSIONAL (SAP)** means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social workers, 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 & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances related disorders. The SAP is also required to have a working knowledge of DOT/FMCSA applicable to the employer for whom he/she evaluates employees who have engaged in a DOT drug or alcohol regulation violation.

**SUBSTITUTED SPECIMEN** is a specimen not consistent with human urine that has been submitted by the employee in place of his or her own urine.

**SUBSTITUTED TEST** means a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine. If a specimen is reported to the Medical Review Officer to have been substituted, the Medical Review Officer will offer the employee/applicant

the right to have his/her split specimen tested. If the specimen is determined to have been substituted, the Medical Review Officer will advise the employee/applicant of specific additional procedural steps that may be taken to challenge the result. If the Medical Review Officer reports that the employee/applicant has a verified substituted test result, it is considered a refusal to take a drug test. A refusal to take a drug test has the same consequences as a verified positive test under FMCSA regulations.

**SUPERVISOR** means all operational supervisors employed by the Town of Proctor to supervise driver employment activities, and who have received 60 minutes of training on the specific and contemporaneous physical, behavioral, and performance indicators of probable drug use, and an additional 60 minutes of similar training of probable alcohol use/misuse. A supervisor does not have to be a supervisor by job description title.

**VALIDITY TESTING** is performed to determine whether a urine specimen is adulterated or substituted. An adulterated specimen means that a specimen 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 level so high that it is not consistent with human urine. Substituted specimen means that the creatinine and specific gravity values of the specimen are so diminished that they are not consistent with human urine.

**VERIFIED NEGATIVE DRUG TEST** means the result of a confirmed laboratory positive test has established the presence of a drug (s) or drug metabolite(s) in a specimen at or above the threshold level, and has been determined negative by the MRO after an evaluation of the donor's medical history and any other relevant biomedical information.

**VERIFIED POSITIVE DRUG TEST** means the result of a confirmed laboratory positive test has established the presence of a drug(s) or drug metabolite(s) in a specimen at or above the threshold level, and has been determined positive by the MRO after an evaluation of the donor's medical history and any other relevant biomedical information.

**WORKPLACE** means a building, property or premise owned or utilized for official business, jobsites, and any type of vehicles owned and/or operated by an employee on behalf of the Town of Proctor.

#### **Section IV. Prohibited Conduct**

In accordance with 49 CFR Part 382, subpart B, "Prohibitions" and the Town of Proctor's own authority, conduct listed in this Section is prohibited. *A driver in violation of the provisions in this Section is subject to disciplinary action up to and including termination for gross and willful misconduct.*

- A. A driver is prohibited from performing, and the Employer is prohibited from using a driver to perform safety sensitive functions upon notification of a verified positive, substituted or adulterated drug test result or an EBT alcohol test result indicating a measured alcohol concentration of 0.02 or greater, regardless of when the drug or alcohol was ingested and regardless of whether or not the driver is under the influence of alcohol or using drugs, as defined in federal, state or local law.
- B. Refusal to Test (alcohol or controlled substance test). Refusal to test means that the driver:
  - 1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the Employer, consistent with DOT/FMCSA regulations, after being directed to do so by the Employer;

2. Fails to remain at the testing site until the testing process is complete. If the reason for the test is pre-employment, then a driver who leaves the testing site before the testing process commences a pre-employment test is not deemed to have refused to test;
3. Fails to provide a urine specimen for any drug test required by Part 40 or FMCSA regulations. If the reason for the test is pre-employment, then a driver who does not provide a urine specimen because he/she has left the testing site before the testing process commences is not deemed to have refused to test;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen;
5. 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;
6. Fails or declines to take a second test the employer or collector has directed the driver to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the Employer under 49 CFR part 40.193. In the case of a pre-employment drug test, the driver is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
8. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process); or is reported by the MRO as having a verified adulterated or substituted test result.

### C. Controlled Substances

The following conduct is prohibited when a driver is performing safety sensitive functions on the Employer's property, in the workplace, on duty, or off duty when the conduct affects the driver's fitness for duty.

1. Use of illicit drugs.
2. Having a verified positive, adulterated or substituted drug test result. If a properly conducted urinalysis shows that the donor has in his/her urine any amount of a drug(s) or drug metabolite(s) whose possession or use is unlawful or in violation of this Program; and, that amount is not the result of medical treatment, prescribed by a licensed medical practitioner for that individual, it will constitute a verified positive drug test. Legally prescribed medications must be written ONLY for the driver. Any driver taking a medication prescribed for another person (including a spouse) will be considered to be taking an illegal substance.
3. Misuse or impairment by authorized drug use, which may affect work performance or pose a danger to the safety of the driver or others. Drivers are required to inform the Employer's designated representative of any therapeutic drug use.
4. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the driver uses any controlled substance unless the controlled substance is prescribed for the driver and is used pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

5. If the Employer has actual knowledge that a driver has used a controlled substance the driver shall not be permitted to perform or continue to perform a safety sensitive function.
6. When a driver fails to provide an adequate urine sample, the Employer, after consulting with Medical Review Officer (MRO) shall direct the driver to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO. The referral physician must have expertise in the medical issues raised by the driver's failure to provide a sufficient specimen, to determine if a medical condition precluded the driver from providing a sufficient amount of urine. The referral, if other than the MRO, must provide a written report to the MRO. The MRO will seriously consider and assess the referral physician's recommendation in making a determination of the reason for the inability to provide an adequate specimen.
  - a. If the MRO determines the failure to provide an adequate specimen was due to a medical condition, the test will be reported as cancelled to the Employer. A cancelled test will not constitute a "refusal to test" and no disciplinary action will be taken.
  - b. If the MRO determines the failure to provide an adequate specimen was not due to a medical condition, the MRO will report a "refusal to test" to the Employer.
7. Leaving the scene of an accident without a valid reason, except to submit to a drug test or to receive or to obtain medical treatment, will create a rebuttable presumption of a refusal to test.
8. Consuming any chemical substance within 32 hours after an accident unless a post accident drug test has been performed.

#### **D. Alcohol**

The following conduct is prohibited when a driver is performing safety sensitive functions on the Employer's property, in the workplace, on duty, or when the conduct affects the driver's fitness for duty.

1. Use of alcohol, an alcohol concentration of 0.02 or greater, or under the influence of alcohol while performing safety-sensitive functions, operating or having physical control of a vehicle, or within four (4) hours before going on duty operating or having physical control of a vehicle.
2. Leaving the scene of an accident, except to submit to an alcohol test or to receive or obtain medical treatment, or consuming any alcohol within eight (8) hours after an accident unless a post accident alcohol test has been performed.
3. Having ANY measured alcohol concentration or detected presence of alcohol while on duty, operating or in physical control of a vehicle (Ref: 49 CFR Part 392.5).
4. Be on duty or operate a vehicle if, by the driver's general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding four (4) hours regardless of whether an EBT alcohol test has been performed.
5. Report for duty, perform or continue to perform safety sensitive functions including driving a vehicle with an alcohol concentration level of 0.02 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.02 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

- a. When a driver has a confirmed alcohol concentration level of 0.02 but less than 0.04 the driver will be immediately removed from performing any safety sensitive function until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test. No action, under DOT/FMCSA, may be taken against a driver based solely on test results showing an alcohol concentration level less than 0.04. The Employer is not prohibited from taking action, under its own authority, or as otherwise consistent with law.
  - b. When a driver has a confirmed alcohol concentration level of 0.04 or greater the driver will be immediately removed from performing any safety sensitive function.
6. Any driver whose appearance, conduct, or other substantiating evidence gives reasonable suspicion of alcohol use and a test cannot be administered will be immediately removed from performing any safety sensitive function. Removal from duty for reasonable suspicion when unable to administer a test for alcohol does not require evaluation by a substance abuse professional.
7. When a driver fails to provide an adequate breath sample, the driver will be referred to a licensed physician, approved by the Employer, for a medical evaluation to determine the reason for the inability to provide an adequate sample.
  - a. If the physician determines the failure to provide an adequate specimen was due to a medical condition, it will not constitute a "refusal to test" and no disciplinary action will be taken.
  - b. If the physician determines the failure to provide an adequate specimen was not due to a medical condition, it will constitute a "refusal to test."

## **Section V. Required Testing**

This Program provides for testing of applicants for employment and employee drivers for the use of controlled substances, including alcohol, for the following purposes:

Pre-employment (Drug Test Only)  
Random  
Return to Duty and Follow Up, if applicable  
Reasonable Suspicion  
Post Accident

Employees will be compensated for time expended to provide test samples only if testing is directed by the Employer. Applicants are not compensated for time expended to provide test samples.

### **A. PRE-EMPLOYMENT**

1. As a condition of employment, all driver applicants are required to comply with the provisions of the Town of Proctor Controlled Substances and Alcohol Testing Policy and the requirements of 49 CFR part 40, and 49 CFR part 382.
2. All driver applicants are subject to pre-employment drug testing unless otherwise exempted by regulation. Testing must be completed, and the Employer must receive a verified negative test result for the driver prior to the first time a driver performs a safety-sensitive function. The

Employer is not required to administer a pre-employment controlled substances test if the driver meets the exceptions of 49 CFR part 382.301(b) as follows:

- a. Has participated in a controlled substances testing program that meets the requirements of 49 CFR part 382 within the previous thirty (30) days; and
  - b. Was tested for controlled substances within the past six (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
  - c. The Employer ensures that no prior employer of the driver has records of a violation of the MCSA regulations or the controlled substances use rule of another DOT agency within the previous six (6) months.
3. If the Employer exercises the exception to perform a pre-employment controlled substances test, the Employer must contact the controlled substances testing program(s) in which the driver participated and shall obtain and retain the following information:
  - a. Name(s) and address (es) of the program(s).
  - b. Verification that the driver participates or participated in the program(s) and the program conforms to Part 40.
  - c. Verification that the driver is qualified under FMCSA regulations, including that the driver has not refused to be tested for controlled substances.
  - d. The date the driver was last tested for controlled substances and the results of any tests taken within the previous six (6) months and any other violations of FMCSA regulations.
4. If the Employer uses, but does not employ a driver more than once a year to operate a CMV, the information enumerated above in #2 must be obtained at least once every six (6) months.
5. Upon an offer of employment and as a condition of employment: (1) An applicant will be asked to disclose, under affidavit, whether he/she has had a positive drug or alcohol test result, or refusals to test on any **pre-employment test** administered by an employer to which the applicant applied for, but did not obtain safety-sensitive transportation work covered by DOT during the past **three (3)** years. If the applicant admits that he/she had a positive or a refusal to test on a pre-employment test, the applicant must satisfy the requirements of V. A. 5.d (1)-(6) below to be considered for employment. (2) The applicant will also be required to sign a release authorizing the Town of Proctor to obtain information on the applicant's alcohol tests with a concentration result of 0.04 or greater, verified positive controlled substances test results, refusals to be tested, and other violations of DOT/FMCSA drug and alcohol testing regulations from DOT employers for whom the individual worked during the **three (3)** years prior to the date of application or transfer.
  - a. If feasible, the information required in V.A.5 above must be obtained from previous employers prior to the first time the applicant performs safety sensitive functions for the Town of Proctor.
  - b. If not feasible, the information must be obtained and reviewed as soon as possible, but no later than 30 calendar days after the first time the applicant performs safety sensitive

functions unless the Employer obtained or made and documented a good faith effort to obtain this information.

- c. The Employer must retain this information (including documentation of a good faith effort to obtain) for three years from the date of the driver applicant's first performance of safety sensitive duties.
- d. Upon receipt of the information described in V.A5., above, if the information states or if the driver applicant admits that he/she has had a verified positive drug or alcohol test, or refusal to be tested, the Employer is prohibited from using the driver applicant to perform safety-sensitive functions until and unless the applicant documents successful completion of the return-to-duty process by submitting evidence of:
  - (1) Evaluation by a substance abuse professional;
  - (2) Completion of any treatment, counseling, rehabilitation, etc., recommended by the substance abuse professional;
  - (3) Reevaluation by a substance abuse professional to determine the applicant has successfully and properly complied with the treatment, counseling, rehabilitation, etc.
  - (4) Passed a return to duty test with a result indicating an alcohol concentration of less than 0.02 and/or a controlled substances test with a verified negative result;
  - (5) Completion of at least six follow up tests with negative results within 12 months after a return to duty; and
  - (6) The applicant has been medically certified as qualified to drive. If the driver applicant refuses to provide written consent to authorize release of the drug and/or alcohol testing history he/she will not be permitted to perform safety sensitive functions as a driver.
- e. If the Town of Proctor is the employer from whom information is requested, after reviewing a driver applicant's specific, written consent, the information must immediately be released to the employer making the inquiry. All information provided must be in writing, and a written, confidential record of the information, including the date, the party to whom it was released, and a summary of the information provided documented and maintained on file.

## **B. REASONABLE SUSPICION**

This Policy provides for the testing of drivers for controlled substances, including alcohol, when a Town of Proctor supervisor, who is trained in accordance with 49 CFR part 382.603, has reasonable suspicion the driver is unfit to perform his/her duties or has used or is using controlled substances and/or alcohol prohibited under this Program.

1. Reasonable suspicion arises from direct observation of use (as defined in this policy), or based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or

Company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

2. Drivers may be directed by the Town of Proctor to undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.
3. Determinations to test will be made immediately before, during or immediately after a driver is performing a safety sensitive function.
4. The supervisor who makes a determination to test a driver for reasonable suspicion of drugs or alcohol shall not perform the specimen collection for the drug test or perform the EBT test for alcohol.
5. Reasonable suspicion alcohol tests will be performed within eight (8) hours of the determination that such testing is required.
6. A driver will be removed from performing safety sensitive functions until a test can be performed confirming an alcohol concentration less than 0.02; for a minimum of 24 hours if an alcohol test is not performed.
7. Procedure - A driver directed to submit to a reasonable suspicion controlled substances and/or alcohol test will be transported to a collection/testing site by the Employer's designated representative for the collection of urine and/or a breath specimen.

### **C. RANDOM**

1. All covered employees are subject to random testing for drugs and alcohol. The selection of drivers for random alcohol and controlled substances testing is made by a scientifically valid method, using a computer based random number generator that is matched with the drivers' social security numbers, and is fully documented. Selections are spread reasonably throughout the calendar year, and each driver selected for testing must be tested during the selection period.
2. Drivers selected for random testing will be notified and shall immediately report to the collection/testing site upon notification to be tested. If the driver is performing a safety sensitive function, other than driving a commercial motor vehicle, at the time of notification, the Employer will ensure the driver ceases to perform the safety sensitive function and proceed to the testing site as soon as possible. Failure to immediately proceed to the collection/testing site may be deemed a refusal to test.
3. Random alcohol tests will be performed while the driver is performing or just before performing safety sensitive functions or just after the driver has ceased performing safety sensitive functions.
4. Random controlled substances testing will be conducted at any time the driver is working for the Employer.
5. When a driver is off work due to long term layoffs, illnesses, injuries or vacation more than 30 days, the pre-employment controlled substances provisions apply prior to the driver performing safety sensitive functions.

## **D. POST ACCIDENT**

- 1.** Drivers are subject to post accident testing for drugs and alcohol as defined in Section III. “Definitions” of this Program. Drivers will be provided with necessary post accident information, procedures, and instructions so that testing can be performed.
- 2.** Post accident drug and alcohol tests will be performed as soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce. Drivers must remain readily available for testing, in the absence of receiving or obtaining medical treatment, and are prohibited from using any drugs or alcohol until testing has been completed. The administration of legal drugs determined to be medically necessary for treatment of injuries of the driver when prescribed by a licensed medical practitioner will not be delayed pending a drug test.
- 3.** Post accident controlled substance tests must be performed as soon as possible but within 32 hours after an accident. If the test is not administered within 32 hours following the accident, the supervisor shall cease any attempt to administer the test, under DOT authority, and document why it was not possible to perform it and maintain on file. Records must be submitted to the FMCSA upon request.
- 4.** Post accident EBT alcohol tests must be performed as soon as possible but within eight (8) hours after the accident.
  - a.** If an EBT test is not administered within two (2) hours following the accident, the supervisor is required to document why it was not performed and maintain on file. Records must be submitted to the FMCSA upon request.
  - b.** If an EBT test is not administered within eight (8) hours following the accident, the supervisor shall cease any attempt to administer the test and document why it was not performed, and if it would have been possible to perform a blood alcohol test.
- 5.** Any “missed” tests, e.g., tests could not be performed shall be reported to FMCSA, upon request.
- 6.** A breath or blood test for the use of alcohol and/or a urine test for the use of controlled substances conducted by Federal, State, or local officials having independent authority for the test, shall be considered to satisfy the post accident testing requirements, provided such tests conform to the applicable Federal, State, or local testing requirements and that the results of the tests are obtained by the Employer.

The following table notes when post-accident drug and alcohol tests are required to be performed in accordance with DOT/FMCSA regulations.

Type of Accident Involved	Citation Issued to the CMV Driver	Test Must Be Performed By Employer
<b>Human Fatality</b>	<b>YES</b>	<b>YES</b>
	<b>NO</b>	<b>YES</b>
<b>Bodily injury with immediate medical treatment away from the scene.</b>	<b>YES</b>	<b>YES</b>
	<b>NO</b>	<b>NO</b>
<b>Disabling damage to any motor vehicle requiring tow away.</b>	<b>YES</b>	<b>YES</b>
	<b>NO</b>	<b>NO</b>

The driver must receive a citation within 32 hours of the occurrence under State or local law for a moving traffic violation arising from the accident.

#### **E. RETURN TO DUTY**

When a driver is in violation of the controlled substances or alcohol prohibitions in this Policy, before a driver returns to duty requiring the performance of safety, he/she must:

1. Be evaluated by a Substance Abuse Professional (SAP);
2. Complete the recommended treatment, counseling plan, etc.
3. Be re-evaluated by the SAP to determine successful completion of treatment; and
4. Submit to a return to duty test for drugs and/or alcohol
  - a. The result for a controlled substances test result must be negative and/or;
  - b. The alcohol test result must confirm an alcohol concentration level less than 0.02.

#### **F. FOLLOW UP**

1. After passing a return to duty test, the driver is required to submit to at least six (6) follow up tests during the first 12 months following return to duty.
2. Follow up testing may be required for up to 60 months unless the substance abuse professional makes a determination testing is no longer warranted.
3. Follow up tests are unannounced and may include testing for drugs and/or alcohol.
4. Follow-up alcohol testing will be conducted only when the driver is performing or just before performing safety sensitive functions, or just after the driver has ceased performing safety sensitive functions.

## **Section VI. Substances to be Tested**

Under this Program applicants and drivers will be routinely tested for the substances listed below:

Cocaine  
Opiates  
Phencyclidine (PCP)  
Cannabinoids (Marijuana)  
Amphetamines, and  
Alcohol

The threshold levels (screening and confirmation) for the substances specifically listed above have been established by DHHS/SAMHSA Regulations, 49 CFR Part 40, and this Program adopts, by reference, these threshold levels for testing purposes as published and including any subsequent amendments

**The name of the Town of Proctor's designated employee to contact to answer any questions, third party administrator, testing laboratory, and Medical Review Officer are listed in Appendix B.**

## **Section VII. Individual Rights**

The individual being tested will receive a copy of the Chain of Custody form upon completion of the specimen collection process for a urine drug test.

A copy of the Chain of Custody form, which includes the test result, will be given to the individual tested for alcohol when performed using an EBT.

## **Section VIII. General Provisions**

- A. If a driver is using a legally obtained prescription or over the counter drug that has actual mind or performance altering effects, he/she must show the medication and/or prescription to the DER at the beginning of the work period. Depending upon the nature of the drug and the driver's job duties, the DER may refuse to allow the driver to perform safety sensitive functions unless he/she refrains from taking the medicine/drug:
1. Until such time as the effects will not be experienced during the driver's on duty time; or
  2. Upon presenting a note from the prescribing licensed medical practitioner stating there are no adverse side effects from taking the prescription, which would impair the driver's ability to safely perform safety sensitive functions.
- B. Witnessed urine specimen collection (specimens collected under direct observation) shall or may be required when:
1. A donor alters or attempts to alter, substitute, or contaminate a urine specimen.
  2. A donor attempts to obstruct the testing process.
  3. The temperature of the urine specimen is outside of the established temperature range 90-100 degrees F.

4. A previous drug test report indicated an adulterated or substituted specimen.
  5. A donor has previously had a verified positive test result.
- C. Drivers shall notify the Designated Employer Representative (DER) of any conviction of a violation, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation) but including a criminal drug or alcohol statute conviction. Drivers are also required to notify the DER if his/her driver's license is suspended, revoked, or canceled by a State or jurisdiction; who loses the right to operate a CMV for any period; or, who is disqualified from operating a CMV. The notification must be made before the end of the business day following the day the employee received notice of the suspension, revocation, cancellation, lost privilege, or disqualification.
- D. Legally prescribed medications must be written **ONLY** for the driver. Any driver taking a medication prescribed for another person (including a spouse) will be considered to be taking an illegal substance. Medications and any food substance containing alcohol are prohibited for drivers on duty and while performing safety sensitive functions. Ingestion of hemp foods or products is not a legal medical explanation as a defense to a positive drug test under DOT.
- E. The Employer reserves the right to implement a policy, in accordance with 49 CFR parts 40.155(c) and 40.197, that requires an employee to immediately take another drug test upon the receipt of a "negative dilute" test result from the MRO. When an employee is directed to take another test (but not under direct observation), the result of the second test becomes the test of record. The employer is not permitted to make the employee take a third test because the second test was also "negative dilute." If an employee does not take a second test, it becomes a refusal to test and the employee will be subject to the same disciplinary action as provided herein on a refusal to test.

#### **Section IX. Consequences of Program Violation(s)**

- A. Except as otherwise provided in this Policy, no driver shall perform safety sensitive functions, including driving a CMV, if the driver has engaged in conduct prohibited by this Policy or an alcohol or controlled substances rule of another U.S. Department of Transportation agency. For purposes of this section, "CMV" means a commercial motor vehicle in commerce as defined herein and a CMV in interstate commerce as defined in 49 CFR part 390.
- B. No driver who has engaged in conduct prohibited by this Policy shall perform safety sensitive functions, including driving a CMV, unless the driver has successfully completed the referral, evaluation, and treatment listed in this Policy.
- C. No driver tested under the alcohol testing requirements of the DOT/FMCSA listed in this Policy who is found to have an alcohol concentration of 0.02 but less than 0.04 shall perform or continue to perform safety sensitive functions for the Town of Proctor including driving a CMV, until the start of the driver's next regularly scheduled duty period, but not less than twenty-four (24) hours following the administration of the test.
- D. Drivers who have engaged in conduct prohibited by this Policy will be advised by the Town of Proctor of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. (**Appendix C**)

- E.** Drivers who have engaged in conduct prohibited by this Policy will be evaluated by a SAP who will determine what assistance the employee needs in resolving problems associated with alcohol misuse and controlled substances use.
- F.** In the event a driver is returned to duty requiring the performance of safety sensitive functions after engaging in conduct prohibited by this Policy, and after successfully completing the return-to-duty requirements, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02, and/or a controlled substances test with a verified negative result, and be subject to the follow-up testing requirements.
- G.** The requirements of this Policy with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment controlled substances test or who have a pre-employment controlled substances test with a verified positive, substituted, or adulterated test result.
- H.** An employee cannot voluntarily self-identify that he/she needs assistance to avoid testing or disciplinary action related to a violation of this Policy.

#### **Section X. Available Assistance**

- A.** A list of names, addresses, and telephone numbers of counseling, treatment and rehabilitation providers is available in (**Appendix C**). The Employer does not imply any endorsement of these services in furnishing such a list.
- B.** An employee may contact the Employer's Designated Representative listed in (**Appendix B**) to identify additional resources for treatment.
- C.** Periodically the Employer will disseminate drug abuse and alcohol misuse information to drivers.
- D.** A driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use must:
  - 1.** Be evaluated by a Substance Abuse Professional (SAP);
  - 2.** Complete the recommended treatment, counseling plan, etc.
  - 3.** Be re-evaluated by the SAP to determine successful completion of treatment; and
  - 4.** Submit to a return to duty test for drugs and/or alcohol
    - a.** The result for a controlled substances test result must be negative and/or;
    - b.** The alcohol test result must confirm an alcohol concentration level less than 0.02.
  - 5.** After passing a return to duty test, the driver is required to submit to at least six (6) follow up tests during the first 12 months following return to duty.
  - 6.** Follow up testing may be required for up to 60 months unless the substance abuse professional makes a determination testing is no longer warranted.
  - 7.** Follow up tests are unannounced and may include testing for drugs and/or alcohol.

8. Follow-up alcohol testing will be conducted only when the driver is performing or just before safety sensitive functions, or just after the driver has ceased performing safety sensitive functions.

### **Section XI. Notification of Program**

- A. Applicants for driver positions may be notified of this Policy by letter, by posting the Policy or a notice there of prominently in the applicant processing area or by including such notice on the application for employment.
- B. All incumbent employee drivers were notified of the Policy prior to implementation and will receive notice of any amendments to this Policy. Copies of the Policy are available for inspection during regular business hours in the Employer's business office.
- C. Questions regarding this Program may be directed to the Employer's Designated Representative listed in (**Appendix B**).

### **Section XII. Consent to Testing**

Applicants and employee drivers are required to complete and sign a form that includes, but is not limited to, the information listed below. The form will be executed and maintained as part of the pre-placement/employment procedures. As such, the requirements for confidentiality are the same as any other record.

- A. Acknowledges that notice of this Policy, 49 CFR part 382, U.S. Department of Transportation/Federal Motor Carrier Safety Administration regulations and testing procedures required in 49 CFR part 40 has been provided.
- B. Acknowledges consent by the applicant or employee to be tested for chemical substances, as defined herein, and comply with the provisions of the Policy.
- C. Authorizes the Employer's Medical Review Officer and a breath alcohol technician, when an EBT test is performed or STT when a saliva/breath screening alcohol test is performed, to release results to the DER.
- D. Acknowledges that no applicant or employee can be forced to submit to a chemical substance screening test, but that failure to submit constitutes a refusal to test and shall create a rebuttable presumption that a chemical substance was present.

### **Section XIII. Disclaimer – Separability & Savings**

- A. Federal regulations shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.
- B. This Policy does not imply any contractual employment relationship and the Employer explicitly reserves the right to "employment at will."

- C. If any portion of this Policy or any amendments hereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any portions should be restrained by such tribunal pending a final determination as to its validity, the remainder of this program and amendments, or the application of such portion to persons or circumstances other than those to which it has been held invalid or as to which compliance with or enforcement of has been restrained shall not be affected.
- D. This Policy is not intended to and shall not constitute any waiver of any rights possessed by the Employer from any source whatsoever. Nothing in this Policy shall be construed as limiting the Employer's right to take disciplinary action up to and including termination for willful misconduct due to involvement with drugs or alcohol not specifically addressed herein.
- E. This Policy may be amended as required by federal, state, or local laws and regulations affecting drug and alcohol testing programs in the workplace.

#### **Section XIV. Discipline**

- A. 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 ( $\geq 0.04$  BAC), disciplinary action against the employee shall include:
  - 1. Mandatory referral to Substance Abuse Professional (SAP) for assessment, formulation of a treatment plan, and execution of a return to work agreement.
  - 2. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination.
  - 3. 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 V.F. of this policy.
  - 4. 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.
  - 5. A periodic unannounced follow-up drug/alcohol test, which results in a verified positive, shall result in termination.
- B. The second instance of a verified positive drug or alcohol ( $\geq 0.04$  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.
- C. A verified positive post-accident drug and/or alcohol ( $\geq 0.04$ ) test shall result in termination.
- D. An alcohol test result of  $\geq 0.02$  to  $\leq 0.039$  BAC shall result in the removal of the employee from duty for eight hours or the remainder of the workday whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to an alcohol test with a result of less than 0.02 BAC. If the employee has an alcohol test result of  $\geq 0.02$  to  $\leq 0.039$

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.

- E. 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 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.
- F. In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:
  - 1. Mandatory referral to a Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement.
  - 2. Failure to execute, or remain compliant with the return-to-work agreement shall result in.
  - 3. 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 V.F. of this policy.
  - 4. 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.
  - 5. 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 policy.
  - 6. 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 this policy.
  - 7. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment.
  - 8. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
- G. 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.
- H. **GRIEVANCE AND APPEAL:** The consequences specified by 49 CFR Part 382 for a positive test or test refusals are not subject to arbitration.

**Appendix A. Drug Tested Cutoff Concentrations for Validity Testing**

**DHHS/SAMHSA Certified Drug Testing Laboratories**

**Drugs Tested/Cutoff Concentrations/Validity Testing/Retention of Specimens**

A laboratory must only test a specimen for the following five drugs or classes of drugs in a DOT drug test. The laboratory is prohibited from testing specimens for any other drugs including DNA testing.

<b>Type of Drug/Metabolite</b>	<b>Initial Test</b>	<b>Confirmation Test</b>
<b><u>Marijuana</u></b> Metabolite Delta-9-teretrahydrocannabinol-9-carboxylic acid (THC)	<b>50</b>	<b>15</b>
<b><u>Cocaine Metabolites</u></b> (Benzoylecgonine)	<b>300</b>	<b>150</b>
<b><u>Phencyclidine (PCP)</u></b>	<b>25</b>	<b>25</b>
<b><u>Amphetamines</u></b> Amphetamine Methamphetamine	<b>1000</b>	<b>500</b> <b>500</b> (Specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/ml).
<b><u>Opiates</u></b> Morphine Codeine 6-MAM	<b>2000</b>	<b>2000</b> <b>2000</b> <b>10 *</b>
*A 6-MAM test is only performed when a specimen contains morphine at a concentration equal to or greater than 2000 ng/ml.		

- On an initial test:** (1) If the result is below the cutoff concentration level it is reported as negative. (2) If the result is at or above the cutoff level, a confirmation test must be performed.
- On a confirmation test:** (1) If the result is below the cutoff level it is reported as negative. (2) If the result is at or above the cutoff level, it is reported as a confirmed positive result.
- Quantitative values for morphine or codeine must be reported at 15,000 ng/ml or above.

Alcohol testing performed by a Certified Breath Alcohol Technician (BAT) using an Evidential Breath Testing (EBT) Device, which appears on the CPL of the National Highway Traffic Safety Administration and approved by DOT. Prohibited alcohol concentration levels are:

**Screening**

**0.02>** requires confirmation

**Confirmation**

**0.02<0.04** requires 24 hours removal  
**0.04>** requires removal and referral to SAP

**Appendix B. Persons Identified to Answer Questions**

As part of the Town of Proctor’s Policy to ensure fair and equal treatment of drivers, the Town of Proctor understands that there may be questions and concerns involving the Controlled Substances and Alcohol Testing Policy.

To assist drivers in understanding the requirements placed on drivers and the Town of Proctor, the Selectboard Chair and Town Administrator have been designated to answer any questions that may arise concerning the Controlled Substances and Alcohol Testing Policy, and may be contacted at:

**Phone:** 459-3333

**Fax:** 459-2356

**Address:** Town Office, 45 Main Street, Proctor, VT 05765

**THIRD PARTY ADMINISTRATOR**

PARAMED PLUS, Inc.  
27 Gable Place  
Barre, VT 05641  
802-479-9201

**DRUG TESTING LABORATORY**

Clinical Reference Laboratory  
8433 Quivira  
Lenexa, KA 66215  
800-445-697

**MEDICAL REVIEW OFFICER**

Dr. Richard Brody, MRO  
200 North Main Street, Suite 6  
East Longmeadow, MA 01028  
413-525-6003  
Fax 413-525-9009

49 CFR part 40 and 49 CFR part 382 must be available upon request to covered employees and representatives of employee organizations. 49 CFR part 40 is accessible on line at <http://www.dot.gov/ost/dapc>, by fax on demand at 1-800-225-3784 requesting document 151, by phone at 1-866-512-1800, or by writing to U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 400 Seventh Street SW, Room 10403, Washington, D.C. 20590.

## **Appendix C. Sources of Assistance and Help**

SAMHSA Facility Locator <http://findtreatment.samhsa.gov>; This searchable directory of drug and alcohol treatment programs shows the locations around the country that treat alcoholism, alcohol abuse and drug abuse problems. The Locator includes more than 11,000 addiction treatment programs, including resource centers, outpatient treatment programs, and hospital inpatient programs for drug addiction and alcoholism. Listings include treatment programs for marijuana, cocaine, and heroin as drug and alcohol treatment programs for adolescents, and adults.

### **National Clearinghouse for Drug and Alcohol Information**

Monday-Friday  
1-800-729-6686

### **National Council on Alcoholism**

7 days a week, 24 hours a day  
1-800-622-2255

### **EAP Clinical Manager**

7 days a week, 24 hours a day  
1-888-392-0050

### **DOT**

[www.dot.gov/dapc/documents.html](http://www.dot.gov/dapc/documents.html)

### **FMCSA**

[www.fmcsa.gov/rules-regulations/topics/drug/drug.html](http://www.fmcsa.gov/rules-regulations/topics/drug/drug.html)

### **FMCSA Montpelier Office**

Monday-Friday  
802-828-4480

**Appendix D. Acknowledgement of Receipt and Understanding**

**THE TOWN OF PROCTOR'S**

**CONTROLLED SUBSTANCES AND ALCOHOL TESTING POLICY AND PROCEDURES**

**ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING**

I HEREBY ACKNOWLEDGE that I have received read and understand my Employer's *Controlled Substances and Alcohol Testing Model Policy* and procedures and understand that I must abide by the terms as a condition of employment. I understand that during my employment I may be required to submit to a controlled substances and/or alcohol test based on U.S. Department of Transportation (DOT) and Federal Motor Carrier Safety Administration (FMCSA) regulations.

I also understand that refusal to submit to a controlled substances or alcohol test is a violation of DOT regulations and my Employer's policy, and may result in disciplinary action, including suspension (with or without pay) or termination of employment for gross and willful misconduct. I further understand the consequences related to controlled substances use or alcohol misuse conduct as prohibited by my Employer's policy.

I acknowledge that the provisions of my *Employer's Controlled Substances and Alcohol Testing Model Policy* and procedures are part of the terms and conditions of my employment, and that I agree to abide by them.

THE UNDERSIGNED STATES THAT HE OR SHE HAS READ THE FOREGOING ACKNOWLEDGEMENT AND UNDERSTAND THE CONTENTS THEREOF:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**Signature of Employee/Applicant**

\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**CDL ID Number**

Original Acknowledgment of Receipt and Understanding will be kept on file with the Town of Proctor. A copy of the Acknowledgement of Receipt and Understanding will be provided to the employee/applicant.