

## Appendix 1: Federal Drug and Alcohol Testing Policy

### PURPOSE

It is the policy of **Delaware County Highway Department** that federally regulated employees and employees in safety sensitive positions are free of substance abuse and alcohol abuse. Consequently, the use of illegal drugs by employees is prohibited. Further, employees shall not use alcohol or engage in “prohibited conduct” as defined herein. The overall goal of this policy is to ensure a drug and alcohol-free environment and to reduce accidents, injuries, and fatalities. A copy of this policy and information regarding the harmful effects of drugs and alcohol is available to all employees. The Transportation Director is designated as the person to answer questions regarding this policy.

### SAFETY SENSITIVE FUNCTION

Definition: *Safety-sensitive function* is all time spent either waiting to be dispatched; inspecting equipment or otherwise inspecting, servicing, and/or conditioning any commercial motor vehicle; driving; in or upon a commercial motor vehicle; loading/unloading a vehicle, supervising or assisting in the loading/unloading process, attending a vehicle being loaded/unloaded, remaining in readiness to operate a vehicle, or giving or receiving receipts for shipments loaded/unloaded; performing accident-related duties; or repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. A supervisor, mechanic or clerk, etc., who is on call to perform safety-sensitive functions may be tested at any time they are on call, ready to be dispatched while on-duty (§382.305).

### TYPES OF TESTS

Pursuant to regulations promulgated by the Federal Motor Carrier Safety Administration (FMCSA) and the Department of Transportation (DOT), the **DELAWARE COUNTY HIGHWAY DEPARTMENT** has implemented six circumstances for drug and alcohol tests: (1) pre-employment, (2) reasonable suspicion, (3) random, (4) post-accident, (5) return-to-duty, and (6) follow-up.

### REFUSAL TO TEST

Substitution, adulteration, or refusal to submit to the types of drug and alcohol tests employed by the **DELAWARE COUNTY HIGHWAY DEPARTMENT** will be grounds for refusal to hire employee/applicants and to terminate employment of existing employees. A refusal to test is defined to be conduct that would obstruct the proper administration of a test. A delay in providing a urine or breath sample could be considered a refusal. If an employee cannot provide a sufficient urine specimen or adequate breath sample, a physician of the **DELAWARE COUNTY HIGHWAY DEPARTMENT** choice will evaluate him or her.

If the physician cannot find a legitimate medical explanation for the inability to provide a specimen (either urine or breath), it will be considered a refusal to test. In that circumstance, the employee has violated one of the prohibitions of the regulations.

Refusal to submit (to an alcohol or controlled substances test) means:

1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a) of this title);

2. Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see §40.63(c) of this title) a pre-employment test is not deemed to have refused to test;
3. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c) of this title) for a pre-employment test 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 employee's provision of a specimen (see §40.67(l) and §40.69(g) of this title);
5. Fail 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 (see §40.193(d)(2) of this title);
6. Fail or declines to take a second test the employer or collector has directed the employee to take;
7. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d) of this title. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
8. Fail 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);
9. Is reported by the MRO as having a verified adulterated or substituted test result.

#### **CONSEQUENCES OF POLICY VIOLATION**

Any employee who becomes unqualified or engages in prohibited conduct as set forth herein may be subject to termination of employment.

#### **PRE-EMPLOYMENT TESTING**

Before an employee performs any safety-sensitive functions for an employer, the employee must submit to testing for drugs. The employer must receive a negative result from the medical review officer (MRO) prior to allowing the employee to drive or perform other safety-sensitive functions. (Note: The pre-employment regulations are listed in §382.301. However, §382.301(e) suspends pre-employment alcohol testing as of May 1, 1995.)

#### **RANDOM TESTING**

The **DELAWARE COUNTY HIGHWAY DEPARTMENT** conducts random drug/alcohol testing. The **DELAWARE COUNTY HIGHWAY DEPARTMENT** or its agents will submit all mandated employees to a computerized random selection system. The random selection system provides an equal chance for each employee to be selected each time random selection occurs. Random selections will be reasonably spread throughout the year. The **DELAWARE COUNTY HIGHWAY DEPARTMENT** will drug test at a minimum 50 percent of the average number of safety sensitive/mandated positions in each calendar year. The **DELAWARE COUNTY HIGHWAY DEPARTMENT** will select at a minimum 10 percent of the average number of safety sensitive/mandated positions for random alcohol testing. Random selection by its very nature may result in employees being selected in successive selections or more than once a calendar year. Alternatively, some employees may not be selected in a calendar year.

If an employee is selected at random for either drug or alcohol testing, a **DELAWARE COUNTY HIGHWAY DEPARTMENT** official will notify the employee. Once notified, every action the employee takes must

lead to a collection. If the employee engages in conduct that does not lead to a collection as soon as possible after notification, such conduct may be considered a refusal to test.

### **POST-ACCIDENT TESTING**

Both drug and alcohol testing is performed following any accident involving a fatality; or any accident in which the employee receives a citation under state or local law for a moving traffic violation arising from the accident. (An accident is defined as an incident involving a vehicle in which there is a fatality, an injury treated away from the scene, or where a vehicle is towed from the scene.) After any accident, the employee must contact the employer as soon as possible.

The FMCSA/DOT requires that any time a post-accident drug or alcohol test is required, that it be performed as soon as possible following the accident. If no alcohol collection can be made within eight (8) hours, attempts to collect a breath sample shall cease. If no urine collection can be obtained for purposes of post-accident drug testing within thirty-two (32) hours, attempts to make such a collection shall cease. All attempts shall be documented.

In the event that federal, state, or local officials conduct breath or blood tests for the use of alcohol and/or urine tests for the use of controlled substances following an accident, these tests shall be considered to meet the requirements of this section, provided the tests conform to a applicable federal, state, or local requirements. The employee will sign a release allowing the **DELAWARE COUNTY HIGHWAY DEPARTMENT** to obtain the test results from federal, state, or local officials.

In the event an employee is so seriously injured that the employee cannot provide a urine specimen or breath sample at the time of the accident, the employee must provide necessary authorization for the **DELAWARE COUNTY HIGHWAY DEPARTMENT** to obtain hospital records or other documents that would indicate whether there were controlled substances or alcohol in the employee's system at the time of the accident.

### **REASONABLE SUSPICION TESTING**

A covered employee must be tested for alcohol misuse when the **DELAWARE COUNTY HIGHWAY DEPARTMENT** has reasonable suspicion to believe that the employee has violated the rules regarding use of alcohol. A determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion testing is authorized only if the required observations are made during, just preceding or just after the period of the workday that the covered employee is performing a safety-sensitive function. A supervisor trained in detecting the symptoms of alcohol misuse must make the observation and determination that a reasonable suspicion exists; however, the supervisor making the determination is not to conduct the reasonable suspicion test on that employee (§382.603). A written record of the observations leading to a controlled substance reasonable suspicion test must be made and signed by the supervisor who made the observations. This record must be made within 24 hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier.

### **RETURN-TO-DUTY**

This testing is required for employees who want to return to work after being unqualified for a safety-sensitive function. The return-to-duty testing can be done once the referral/evaluation has been completed. All return-to-duty testing must be observed by a collector of the same sex except when

performed by physicians or nurses (§40.67(b)), and requires a negative result prior to the employee returning to a safety-sensitive function.

### **FOLLOW-UP**

Follow-up testing is required after rehabilitation for a drug or alcohol misuse problem and a return-to-duty test. Six unannounced follow-up tests are required within one year of evaluation and treatment by a Substance Abuse Professional (SAP). All follow-up testing must be observed by a collector of the same sex except when performed by physicians or nurses (§40.67(b)).

### **PROHIBITED CONDUCT**

The following shall be considered “prohibited conduct” for purposes of this policy:

- No employee shall report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.
- No employee shall be on duty or operate a commercial motor vehicle while in possession of alcohol unless the alcohol is transported and manifested as part of a shipment.
- No employee shall use alcohol while performing safety-sensitive functions.
- No employee shall perform safety-sensitive functions within eight (8) hours after using alcohol.
- No employee required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- No employee shall refuse to submit to a post-accident, a random, a reasonable suspicion, return-to-duty, follow-up, or post-injury breath-alcohol or urine drug test.
- No employee shall report for duty or remain on duty when the employee uses any controlled substance, except when use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee’s ability to operate a commercial motor vehicle or perform a safety sensitive function.

If the **DELAWARE COUNTY HIGHWAY DEPARTMENT** has actual knowledge or has reason to believe that an employee has engaged in prohibited conduct, the **DELAWARE COUNTY HIGHWAY DEPARTMENT** may require the employee to submit to drug and/or alcohol testing. If an employee engages in prohibited conduct, the employee is not qualified to drive a commercial motor vehicle or to perform a safety sensitive function and shall be immediately removed from service. The **DELAWARE COUNTY HIGHWAY DEPARTMENT** may in its discretion and at the request of the employee, keep the employee’s position open while such employee attempts to become re-qualified. At its discretion, the **DELAWARE COUNTY HIGHWAY DEPARTMENT** may also take action against the employee up to and including termination.

### **SUBSTANCE ABUSE EVALUATION**

Any employee who engages in prohibited conduct shall be provided with names, addresses, and telephone numbers of qualified substance abuse professionals. If the employee desires to become re-qualified, the employee must be evaluated by a Substance Abuse Professional (SAP) and submit to any treatment prescribed by the SAP. Following evaluation and treatment, if any, in order to become re-qualified the employee must submit to and successfully complete a return-to-duty drug and/or alcohol test. Such an employee is also subject to follow-up testing. Follow-up testing is separate from and in addition to the **DELAWARE COUNTY HIGHWAY DEPARTMENT’S** reasonable suspicion, post-accident, and random testing procedures. Follow-up testing shall be on a random basis and be in accordance with the instructions of the Substance Abuse Professional. Follow-up testing may continue for a period of up to 60 months following the employee’s return to duty. No fewer than six (6) tests shall be performed in

the first twelve (12) months of follow-up testing. The costs of any SAP evaluation or prescribed treatment shall be borne by the employee. The **DELAWARE COUNTY HIGHWAY DEPARTMENT** does not guarantee or promise a position to the employee should he/she regain qualified status.

#### **AUTHORIZATION FOR PREVIOUS TEST RECORDS**

Within 30 days of performing a safety-sensitive function, federal regulations require that the **DELAWARE COUNTY HIGHWAY DEPARTMENT** obtain certain drug and alcohol testing records from employee's previous employers for the previous 3 years of employment. (Other forms: work record 3 years, DMV and Hazmat 7 years, drug and alcohol authorization form for past employers, 2 years.)

As a condition to employment, the employee shall provide the **DELAWARE COUNTY HIGHWAY DEPARTMENT** with a written authorization for all previous employers within the three years to release such drug and alcohol testing records as are required under federal regulation.

#### **DRUG URINALYSIS**

Drug testing will be performed through urinalysis. Urinalysis will test for the presence of drugs and/or metabolites of the following controlled substances: (1) marijuana, (2) cocaine, (3) opiates, (4) amphetamines, and (5) phencyclidine (PCP).

The urinalysis procedure starts with the collection of a urine specimen. Urine specimens will be submitted to a SAMHSA-certified laboratory for testing. As part of the collection process, the specimen provided will be split into two vials: a primary vial and a secondary vial. The SAMHSA certified laboratory will perform initial screenings on all primary vials. In the event that the primary specimen tests positive, a confirmation test of that specimen will be performed before being reported by the laboratory to the MRO as a positive.

All laboratory results will be reported by the laboratory to a Medical Review Officer (MRO) who is designated by the **DELAWARE COUNTY HIGHWAY DEPARTMENT**. Negative test results shall be reported by the MRO to the **DELAWARE COUNTY HIGHWAY DEPARTMENT**. Before reporting a positive test result to the **DELAWARE COUNTY HIGHWAY DEPARTMENT**, the MRO will attempt to contact the employee to discuss the test result. If the MRO is unable to contact the employee directly, the MRO will contact a **DELAWARE COUNTY HIGHWAY DEPARTMENT** management official designated in advance by the **DELAWARE COUNTY HIGHWAY DEPARTMENT** who shall in turn contact the employee and direct the employee to contact the MRO. Upon being so directed, the employee shall contact the MRO immediately or, if after the MRO's business hours and the MRO is unavailable, at the start of the MRO's next business day. In the MRO's sole discretion, a determination will be made as to whether a result is positive or negative.

Pursuant to FMCSA/DOT regulations, individual test results for applicants and employees will be released to the **DELAWARE COUNTY HIGHWAY DEPARTMENT** and will be kept strictly confidential unless consent for the release of the test results has been obtained. Any individual who has submitted to drug testing in compliance with this policy is entitled to receive the results of such testing upon timely written request.

An individual testing positive may make a request of the MRO to have the secondary vial tested. A SAMHSA certified laboratory will test the secondary vial different from the one that tested the primary specimen. The individual making the request for a test of the second specimen must pre-pay all costs

associated with the test. The request for testing of a second specimen must be made to the MRO within 72 hours of the individual being notified by the MRO of a positive test result.

### **ALCOHOL TESTS**

The **DELAWARE COUNTY HIGHWAY DEPARTMENT** will perform alcohol tests using an evidential breath-testing device. The **DELAWARE COUNTY HIGHWAY DEPARTMENT** may provide use of an evidential breath-testing device through a vendor or agent. The employee shall report to the site of an evidential breath-testing device as notified by the **DELAWARE COUNTY HIGHWAY DEPARTMENT**. A breath alcohol technician will operate the evidential breath-testing device. The employee shall follow all instructions given by the breath alcohol technician.

In the event that an employee has a blood alcohol content of 0.02 to 0.0399 on the basis of the evidential breath, the employee shall be removed from duty for 24 hours or until his/her next scheduled on-duty time, whichever is longer. Employees are not medically qualified until after the 24-hour time frame expires. Employees with tests indicating a blood alcohol concentration of 0.04 or greater are considered to have prohibited conduct which may result in disciplinary action up to and including termination. All alcohol tests shall be performed just prior to, during, or just after duty.

### **TRAINING**

#### **For Designated Employer Representative (DER) and Supervisors:**

The **DELAWARE COUNTY HIGHWAY DEPARTMENT** shall ensure that Supervisors who are designated to determine whether reasonable suspicion exists to require an alcohol test must receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Supervisors who are designated to determine whether reasonable suspicion exists to require a controlled substance test must receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable use of controlled substances under §382.307.

#### **For Employees:**

The **DELAWARE COUNTY HIGHWAY DEPARTMENT** shall provide educational materials that explain the requirements of §382.601, consequences of violating the regulations, materials that explain the harmful effects of alcohol and drug abuse, and the employer's policies and procedures with the respect to meeting these requirements. The materials supplied to employees may include information on additional employer policies with respect to the use or possession of alcohol or controlled substances, for example, the consequences for an employee found to have a specified alcohol or controlled substances level based on the employer's authority independent of §382.601. The **DELAWARE COUNTY HIGHWAY DEPARTMENT shall ensure that each employee sign a required statement certifying that he/she has received a copy of these materials described in §382.601. (See the "Driver Education Packet" for information and signature page.)**

This policy is not intended, nor should it be construed, as a contract between the **DELAWARE COUNTY HIGHWAY DEPARTMENT** and the employee. This policy may be changed at any time at the sole discretion of the **DELAWARE COUNTY HIGHWAY DEPARTMENT**.