



ADMINISTRATIVE REGULATION

Effective Date: January 10, 1996

Administrative Regulation: 1-34

Revision Date: April 25, 2018

Supersedes: January 24, 2018

Approved By: William H. Ashton II

Subject: Substance Abuse Testing Program for Town Commercial Drivers

I. Purpose

This policy will provide procedures for alcohol and controlled substance testing of all town employees and applicants for positions where possession of a Commercial Driver's License (CDL) is required. Testing requirements herein comply with the requirements of the Department of Transportation (DOT) and the Federal Highway Administration (FHWA).

II. Policy

The Town of Herndon values its employees and recognizes each person's need for a safe and healthy work environment. Employees who use illegal drugs and abuse alcohol tend to be less productive, less reliable, more prone to accidents and greater absenteeism, resulting in the potential for increased accidents, costs and risks to the town and public. The town is committed to maintaining a safe workplace for our drivers and the other users of the highways, free from illegal drug use and misuse of alcohol. The town will comply with the requirements for testing by the United States Department of Transportation and other federal and state laws and regulations. The federal laws that provide drug free workplace and alcohol and controlled substance testing standards are: 1) The Drug Free Workplace Act of 1988, and 2) Omnibus Transportation Employee Testing Act of 1991 (Title 49 CFR Parts 382 and following, FHWA Regulations in Controlled Substance and Alcohol Use and Testing and Title 49 CFR, Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Program). The town, therefore, forbids the unlawful use or possession of alcohol and controlled substances. The violation of this policy or regulations and laws may result in severe disciplinary action, including dismissal at the town's discretion.

III. Official Representation

As part of the town's continuing policy to ensure fair and equal treatment of its drivers, the town understands that there may be questions or concerns involving our controlled substance and alcohol testing policies and programs. To assist employees in understanding the requirements placed on the driver and the town as the employer, the town has designated the Director of Human Resources to answer questions regarding alcohol and drug testing programs. The telephone number is 703-435-6817.

ADMINISTRATIVE REGULATION

IV. Eligibility Criteria

The Federal Highway Administration of the U.S. Department of Transportation requires certain drivers to undergo drug and alcohol testing. The drivers who must be tested are those required to have a CDL. This testing will involve drivers with a CDL who drive a motor vehicle or are required to possess a CDL to perform their duties, including those who drive a town commercial vehicle only occasionally, and employees who repair, inspect or maintain commercial vehicles.

- With a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit, with a gross weight of more than 10,000 pounds;
- With a gross vehicle weight rating of 26,001 or more pounds;
- Designed to transport 16 or more passengers including the driver;
- Of any size that are used to transport hazardous material which requires the vehicle to be black carded under the hazardous material regulations.

V. Safety Sensitive Functions

A driver is performing a safety sensitive function when:

- Waiting at a terminal facility, shop, or other property to be dispatched, unless the driver has been relieved from duty by the town;
 - Performing pre-trip inspections or servicing the vehicle;
 - Driving the motor vehicle;
 - Riding on the vehicle except when the driver is resting in a sleeper berth;
 - Loading or unloading the vehicle;
 - Supervising the loading or unloading;
 - Giving receipts for the load;
 - Remaining in readiness to operate the motor vehicle;
 - Performing duties and services at an accident scene; or
 - Repairing, obtaining assistance for, or remaining in attendance of a disabled vehicle.
-

ADMINISTRATIVE REGULATION

VI. Prohibited Conduct

A town CDL driver who performs a safety sensitive function as defined in this section shall not:

- Report for duty or remain on duty to perform a safety sensitive function while having an alcohol concentration of 0.02 or greater;
- Drive a town-owned vehicle within four hours after consuming alcohol;
- Use alcohol for eight hours following an accident or until the CDL driver has undergone post-accident alcohol/controlled substance testing, whichever is first;
- Refuse to submit to an alcohol or controlled substance test required by post-accident, random reasonable suspicion, return to duty, or follow up testing requirements;
- Report for duty or remain on duty requiring the performance of a safety sensitive function when the CDL driver uses any controlled substances, except when the use is pursuant to the written instructions of a physician who has advised the CDL driver that the substance does not adversely affect the driver's ability to operate the vehicle safely;
- Report for duty or remain on duty to perform a safety sensitive function while under the influence of prescription or over the counter drugs that could impair the employee's ability to perform duties safely. CDL drivers are required to verify with their physician upon receipt of a prescription that the substance will not adversely affect their ability to perform safety sensitive functions. If the physician indicates that the substance might impair the CDL driver's ability to safely perform his/her duties, the driver shall so advise his/her supervisor immediately, prior to performing safety sensitive functions;
- Report for duty if the CDL driver who is not on an official, on-call roster, is contacted and requested to come to work outside his/her normal duty hours to perform emergency or unscheduled work and reports off duty consumption of alcohol or medication that may affect the CDL driver's ability to perform safety sensitive functions, then the supervisor shall not require the driver to report to work to perform safety functions.

ADMINISTRATIVE REGULATION

VII. When a CDL Driver Must be Tested

Testing CDL drivers may include the following:

	Alcohol Test	Drug Test
Pre-employment	Yes	Yes
Post-Accident	Yes	Yes
Random	Yes	Yes
Return to Duty	Yes	Yes
Follow-up	Yes*	Yes
Reasonable Suspicion	Yes	Yes

*Required if the test results of the original tests were ≥ 0.04 BAC

A. Pre-employment Testing

Applicants for jobs where possession of a CDL is required must undergo testing for alcohol and controlled substances and the results evaluated. The applicant shall be given a completed testing Authorization of Services Form to take to the test site and the test site must promptly advise the town of the results of this test. The town job advertisement shall inform applicants about testing requirements. A positive test result or a refusal to consent to or to take a required test shall be grounds for revocation of an offer of employment.

If the applicant is a current town employee seeking promotion or transfer to a position requiring a CDL, testing must occur before the employee performs safety sensitive functions in the new position. The employee's former position should be held open until verified negative alcohol and controlled substance test results are received.

If requested in writing, results of the controlled substance testing will be made available to applicants. This request must be made within 60 days of the applicant being informed of the disposition of the employment application.

B. Post-Accident Testing

The need for post-accident testing will be determined by guidelines set forth by the Human Resources Department and in accordance with the Federal Motor Carrier Safety Administration guidelines.

1. Employees and new hires requiring a CDL must provide advance written consent for post-accident testing and release of test results to the town.
2. The CDL driver involved in an accident while operating a commercial vehicle may not drive a town vehicle for 24 hours. Additionally, the employee's test for alcohol must be no more than 0.02 alcohol concentration and he/she must have a verified negative controlled substance test prior to returning to performing safety sensitive functions.

ADMINISTRATIVE REGULATION

3. The employee should contact his/her supervisor immediately to report the accident and determine the appropriate post-accident procedures to be followed.
4. If a CDL driver is injured in an accident and unable to provide a breath sample or urine specimen, the town will obtain hospital reports, if available, that would indicate alcohol or controlled substance use. The CDL driver shall indicate such consent in writing as a condition of employment to operate a commercial vehicle for the town.
5. As soon as possible following an accident, the CDL driver involved must be tested for alcohol and controlled substances. An alcohol test should be administered within two hours following the accident, but in no case more than eight hours after the accident. A controlled substance test under this section must be administered within thirty-two hours following the accident. A driver who is subject to post accident testing shall remain readily available for such testing. If the driver is not available for any reason except temporarily leaving the accident scene to obtain assistance in responding to the accident or obtaining necessary emergency medical care, he or she will be deemed to have refused to submit to testing. An employee must remain alcohol free for up to eight hours after the accident unless testing is completed or unless he or she is advised that he or she will not be tested.

C. Random Testing

A designated percentage of CDL drivers will be subject to random alcohol and controlled substance testing each year in accordance with DOT guidelines to include 20 percent of drivers for alcohol testing and 50 percent of drivers for controlled substance testing. Selection of drivers to be tested shall be done by a scientific validated, random method which ensures that each driver has an equal chance of being selected each time that selections are made.

1. Random tests will be conducted periodically on an unannounced basis throughout the calendar year.
 2. A holder selected for random testing will be notified of selection for testing, given an Authorization of Services Form, and will be required to report to the collection site immediately to provide a urine and/or breath sample as required. The CDL driver shall report directly to the assigned collection site. If the testing will be done on site at a town facility, the employee shall remain at the facility until called. The CDL driver is expected to show the complete breath Alcohol Testing Form and/or Chain of Custody Form to Human Resources immediately after leaving the collection site and then return to the work site. The time spent in the testing process shall be compensated as regular hours or overtime as appropriate.
 3. CDL drivers who refuse to provide a urine or breath sample, fail to proceed directly to the collection site, or who attempt to tamper with or provide an adulterated sample shall be deemed to have refused to test and will be removed immediately from all safety sensitive duties and shall be subject to disciplinary action, including dismissal.
-

ADMINISTRATIVE REGULATION

4. Random tests may be conducted immediately before, during or immediately after the CDL driver's scheduled shift in a safety sensitive position.
5. All departments utilizing CDL drivers shall provide an updated, current roster of employees requiring a CDL to the Director of Human Resources and shall advise the director immediately of any changes to this roster.

D. Return to Duty and Follow-Up Testing

These tests are required when a driver who has violated the prohibited alcohol conduct standards or tested positive for drugs returns to performing safety sensitive duties. At least six unannounced tests shall be conducted in the first twelve months after a driver returns to duty. Follow up testing may be extended for up to sixty months following return to duty. Follow up testing is in addition to all other DOT required testing.

E. Reasonable Suspicion Testing

1. CDL drivers shall be required to immediately submit to an alcohol and/or controlled substance test if a supervisor, trained to recognize signs of alcohol use or controlled substance use, observes behavior or appearance characteristic of alcohol or controlled substance use, or upon receipt of information of such behavior or appearance, when the nature of such information suggests the source was reliable and credible. The observation must be made while the CDL driver is on duty.
 2. Once a supervisor determines that reasonable suspicion exists, the CDL driver shall be directed to submit to testing and be transported to the test site by a supervisor. An Authorization of Services Form should be completed and taken to the test site. The CDL driver directed to submit to alcohol or drug testing shall be informed of the reasons for the test and the fact that refusal to provide the specimen constitutes a violation of DOT regulations and is grounds for dismissal. The supervisor or human resources representative shall document the information communicated to the driver and the evidence which constituted reasonable suspicion not later than twenty-four hours after the observed behavior.
 3. The CDL driver may be placed on administrative leave while undergoing the tests and may not be allowed to return to the work site until his or her next regularly scheduled work day. The employee may not be allowed to resume safety sensitive functions until the employee's test for alcohol is less than 0.02 alcohol concentration or he or she has a verified negative controlled substance test. The town may temporarily assign the driver to non-safety sensitive functions or leave the driver on administrative leave until test results are received.
 4. The CDL driver who refuses to be tested shall be subject to disciplinary action including dismissal for failure to comply with DOT regulations and the Town of Herndon's policy.
-

ADMINISTRATIVE REGULATION

5. If an employee is using, distributing, selling or possessing controlled substances on the job, the Town of Herndon police shall be notified immediately. Any of the above actions as well as the consumption of alcohol while on duty may be grounds for disciplinary action.
6. Any CDL driver who voluntarily acknowledges a chemical dependency prior to being required to report for testing or prior to an accident shall be permitted to continue employment subject to the following conditions:
 - a. The CDL driver volunteers for treatment prior to being confronted by a manager with a violation of this regulation.
 - b. The CDL driver reports to the Employee Assistance Program (EAP) for assessment, treatment and referral and successfully adheres to the requirements of a recommended treatment program.
 - c. The CDL driver does not afterward violate this regulation.
 - d. In the case of CDL drivers returning to safety sensitive duties, the town exercises the right to test for alcohol or controlled substances or both on a random or reasonable suspicion basis.
 - e. The CDL driver's job security and/or promotional opportunities will not be jeopardized as a result of such a request for help so long as the employee successfully adheres to the requirements stated. However, a reassignment to non-safety sensitive duties may occur.

VIII. Testing Procedures

A. Alcohol

1. Tests shall be conducted as specified in DOT regulations, Title 49 CFR Part 40.
 2. Under these regulations, all testing will be conducted for alcohol from breath tests administered by qualified contractor personnel. Breath specimen collections require:
 - a. A designated collection site;
 - b. Security of the collection site; and
 - c. Privacy during collection.
 3. Alcohol Breath Testing requires the use of an appropriately certified Evidential Breath Testing (EBT) device operated by a certified Breath Alcohol Technician (BAT).
-

ADMINISTRATIVE REGULATION

4. Upon entering the test location, the CDL driver shall be asked to provide positive photo identification to the technician and to submit the Authorization of Services Form. The driver and the BAT shall complete the Alcohol Testing Form (distributed at the test site) and follow required testing procedures.

Providing incomplete information, engaging in conduct that obstructs the testing process or failing to sign the required certifications shall be regarded as a refusal to take the test and shall constitute grounds for disciplinary action.

At the completion of the screening test, the results will be shown to the CDL driver. If test results are negative, the CDL driver will be given a copy of the "Alcohol Testing Form" and he or she shall return to work.

If the results of the screening test shows a detectable alcohol concentration of 0.02 or greater, a confirmation test will be performed within a specified time.

If detectable amounts of alcohol of 0.02 or greater breath alcohol concentration (BAC) or higher are verified in the confirmation test the CDL holder will be in violation of this regulation. An individual with a verified positive confirmation test shall not leave the test site without the approval of his or her supervisor.

Prior to return to duty, the CDL holder who tests positive must comply with the provisions for return to duty.

At the conclusion of testing, copies of the Alcohol Testing Form will be retained by the testing location, provided to the CDL driver, and transmitted in a confidential manner to the Department of Human Resources.

If a screening or confirmation test cannot be completed, or an event occurs that would invalidate the test, the technician will conduct a new screening or confirmation test as applicable.

B. Controlled Substances

1. Tests shall be conducted as specified in DOT regulation, Title 49 CFR Part 40.
2. Under these regulations, all testing will be conducted from urine specimens administered by qualified contractor personnel. Urine specimen collection procedures require:
 - a. A designed collection site;
 - b. Security of the collection site;
 - c. Chain-of-custody documentation;

ADMINISTRATIVE REGULATION

- d. Privacy during collection;
 - e. Integrity and identity of the specimen; and
 - f. Transportation to a designated laboratory.
3. Upon entering the test location, the CDL driver shall be asked to provide positive photo identification to the technician and submit an Authorization of Services Form. The CDL driver and the technician will complete the required forms distributed at the test site and follow required testing procedures.

Providing incomplete information, engaging in conduct that obstructs the testing process or failing to sign the required certifications shall be regarded as a refusal to take the test and shall constitute grounds for disciplinary action.

A urine sample is collected subject to the split sample testing procedures. If the CDL driver is unable to provide the specified quantity of urine, the CDL driver shall drink not more 40 ounces of fluid and wait up to three hours to provide another sample. If a complete sample still cannot be provided, the CDL driver will return to the work site but will not be allowed to perform safety sensitive functions until the town has consulted with the Medical Review Officer (MRO).

The information about the incomplete test will be sent to the MRO. The MRO will refer the CDL driver for a medical evaluation to determine if the inability to provide a specimen is genuine. If the MRO determines that the inability to provide a specimen is not genuine, then he/she will report the findings as a refusal to test in writing to the Director of Human Resources.

4. At the completion of the test, the CDL driver will be given a copy of the Chain of Custody Form and he/she will return to work.
5. Copies of the forms will be retained by the testing location. The specimen will be transported to the designated laboratory as required by DOT regulations.

IX. Test Results

A. Alcohol Test Results

1. If the results of the screening test are negative, the testing laboratory will inform the CDL driver and the Department of Human Resources of the NEGATIVE report and no further testing of the specimen will be conducted. The technician shall forward the results of all alcohol tests to the Director of Human Resources.
 2. If the result of the screening test is an alcohol concentration of 0.02 or greater, the technician shall perform a confirmatory test according to DOT regulations.
-

ADMINISTRATIVE REGULATION

3. If the confirmatory test is negative, the testing lab will so inform the CDL driver and the Department of Human Resources.
4. If the result of a confirmatory test shows alcohol present in an amount equal to or exceeding 0.02 percent, the CDL driver and the Director of Human Resources will be notified and the CDL driver shall be removed immediately from all driving related duties. The CDL driver shall not perform safety sensitive functions until he or she complies with the provisions of these procedures. The Director of Human Resources will notify the appropriate department head who will make arrangements for transporting the CDL driver home. The Procedures in Section X, Positive Test Results, must be followed. MRO evaluation is not required for BAC tests.

B. Controlled Substance Test Results

1. First, an immunoassay test will be conducted as specified in DOT regulation, Title 49 CFR Part 40.
2. If the result of the immunoassay test is negative, the testing laboratory will forward the results to the MRO and no further testing of the specimen will be conducted. MRO staff will "administratively review" the records and report the results to the Director of Human Resources, who will notify the CDL driver of the negative results of the test.
3. If the result of the immunoassay test is POSITIVE (results exceed the levels for any of the drugs tested), a gas chromatography/mass spectrometry confirmatory test will be performed.
4. A positive conclusion will not result unless both the immunoassay and the gas chromatography/mass spectrometry tests result in a POSITIVE.
5. The laboratory shall forward the results of the test to the MRO for review.
6. The MRO shall review and interpret confirmed POSITIVE test results. The MRO shall examine alternative medical explanations for any POSITIVE test results. This may include, but is not limited to conducting a medical interview and a review of the CDL driver's medical history, or review of any other relevant biomedical factors. If the sample is suspected of adulteration, the MRO shall recommend that the town obtain and analyze another sample from the CDL driver.
7. The MRO shall afford the CDL driver the opportunity to discuss a POSITIVE test result before reporting the result to the Director of Human Resources.

The MRO shall inform the CDL driver of his or her right to request that the split specimen be tested in a different Substance Abuse and Mental Health Services Administration approved laboratory for presence of the drug(s) for which a positive result was obtained. The MRO shall honor the CDL driver's request if it is made within seventy-two hours of the CDL driver having been informed by the MRO of a verified

ADMINISTRATIVE REGULATION

positive test result.

8. After contacting the CDL driver, but in no case more than three business days after completing the review, the MRO shall provide the Department of Human Resources with the following information:
 - a. The controlled substance test being reported was conducted in accordance with Title 49 CFR part 40;
 - b. The name of the CDL driver for whom the test results are being reported;
 - c. The reason for the test (e.g., pre-employment, random, post-accident, etc.);
 - d. The date and location of the test collection;
 - e. The identities of the persons or entities performing the collection, analyzing of the specimens and serving as the MRO for the specific test; and
 - f. The verified results of a controlled substance test, either positive or negative, and, if positive, the identity of the controlled substance(s) for which the test was verified positive.
 9. If the MRO is not able to contact the CDL driver, the MRO shall report to the Director of Human Resources that he or she has made and documented all reasonable efforts to contact the CDL driver. The Director of Human Resources shall direct the CDL driver to contact the MRO before driving a town commercial motor vehicle or within twenty-four hours, whichever is earlier.
 10. Without communicating with the CDL driver; the MRO may verify a test as positive to the Director of Human Resources if:
 - a. The CDL driver declines to discuss the results of the test with the MRO; or
 - b. More than five days have passed since the CDL driver was instructed to contact the MRO; or
 - c. Other circumstances specified in the DOT regulations so permit.
 11. The Director of Human Resources will notify the appropriate department director if the test results are positive. If a positive result is confirmed, procedures in Section X, Positive Test Results, shall be followed. If the MRO determines that there is a legitimate medical explanation for a positive test result, the MRO shall report the results as **NEGATIVE**.
-

ADMINISTRATIVE REGULATION

X. Positive Test Results

- A. If a positive alcohol or controlled substances test results, the CDL driver must be assigned to a non-safety sensitive position or placed on leave without pay until a determination is made regarding discipline or medical treatment or both. The department head shall discuss individual cases with the Director of Human Resources.
 - B. A CDL driver who is relieved of his or her duties as a result of a positive alcohol test shall not be permitted to operate a motor vehicle for the town. The town shall make every attempt to locate a family member or friend to transport the CDL driver home. If this is unsuccessful, the department head shall make arrangements for the CDL driver to take public transportation or may call a taxi.
 - C. The Director of Human Resources or his or her designee shall conduct a thorough review of the circumstances prior to determining if disciplinary action shall be taken. The disciplinary action taken will depend upon the severity of the offenses and the CDL driver's work history.
 - D. Prior to returning to safety sensitive duties, The CDL driver must:
 - 1. Be referred to the Employee Assistance Program (EAP) by the supervisor;
 - 2. Be assessed by the EAP and comply with the recommended treatment program. The CDL driver shall authorize the release of information to the Director of Human Resources, verifying EAP participation, assessment and treatment recommendations and successful compliance with any recommended treatment plan; and
 - 3. Undergo a return-to-duty alcohol or controlled substance test, or both, as applicable. An alcohol test must indicate an alcohol concentration of less than 0.02 and a controlled substance test must indicate a verified negative result.
 - E. Follow-up Testing
 - 1. Following a CDL driver's return to duty after a positive alcohol or controlled substance test result or following voluntary acknowledgement of controlled substance use or alcohol abuse, the CDL driver shall be subject to unannounced follow-up alcohol or controlled substance testing or both. The town shall conduct a minimum of six controlled substance or alcohol tests to be randomly conducted during the first twelve months following the CDL driver's return to duty. Both tests for alcohol and controlled substance may be required if recommended as a part of the prescribed follow-up by the substance abuse professional as such testing may continue for up to sixty months. Follow-up testing is in addition to all other DOT required testing.
 - 2. Alcohol and controlled substances follow-up testing may be conducted immediately before, during or immediately after the CDL driver's scheduled shift in a safety sensitive position.
-

ADMINISTRATIVE REGULATION

XI. Test Records

- A. The records pertaining to the alcohol and controlled substance testing program shall be maintained by the Department of Human Resources. Access to these records shall be limited to designated staff.

Both positive and negative drug test information shall be maintained by the Department of Human Resources. POSITIVE drug test results must be maintained for five years in a confidential file separate from personnel records. NEGATIVE test results shall be maintained separated from personnel records for a minimum of twelve months.

- B. The town shall maintain records and report data as specified in DOT regulations, Title 49 CFR Part 382.
- C. Except as required by law or expressly authorized or required by DOT regulations, Title 49 CFR Part 382, the town will release test information maintained under the alcohol and controlled substances testing program only to the CDL driver, on written request, or to an identified person as directed in writing by the CDL driver authorizing the release of the information.

XII. CDL Driver Information and Training

A. Information Dissemination

The town shall provide to each CDL driver covered by this regulation a CDL driver's Alcohol and Controlled Substance Testing Program informational document which complies with Title 49 CFR Part 382. Each CDL driver shall acknowledge in writing receipt of these materials.

Every CDL driver shall be aware of this regulation. Department heads shall ensure that all CDL drivers are aware of this regulation.

B. Substance Abuse Awareness

Alcohol and controlled substance misuse have many serious adverse consequences on an individual's health, safety, work and personal life.

To assist employees in learning more about the consequences of alcohol and controlled substance misuse, the town provides an employee assistance program for employees and family members. There is no cost for the services provided by the EAP. Costs associated with continued counseling or treatment are the responsibility of the employee. Employees may contact Human Resources for more information.

Employees may also contact their medical provider or health insurance carrier to discuss other resources available to them.

ADMINISTRATIVE REGULATION

C. Training

All supervisors of CDL drivers covered by this policy shall receive at least two hours of training on alcohol misuse and controlled substance use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substance.

XIII. Supervisory Responsibilities

- A. All supervisors of CDL drivers are prohibited from revealing any information to anyone which could alert an employee that his/her name has been randomly selected for alcohol and/or controlled substance testing. Any supervisor who is responsible for revealing such information shall be subject to disciplinary action, including dismissal.
- B. Supervisors of CDL drivers are prohibited from allowing a CDL driver who is impaired or appears impaired to perform safety sensitive functions. When a supervisor believes an employee is impaired, he/she must make an evaluation to determine if there is reasonable suspicion for testing. The supervisor who does not perform such an evaluation or seek additional assistance in conducting an evaluation on any employee about whom he/she has questions regarding impairment shall be subject to disciplinary action including dismissal.



William H. Ashton II
Town Manager