

900. ALCOHOL AND DRUG FREE WORKPLACE

901. Alcohol and Drug Testing Requirements of Commercial Motor Vehicle Operators

The Omnibus Transportation Employee Testing Act of 1991 (OTETA) and the regulations declared thereto, Title 49 Code of Federal Regulations (CFR) Parts 382, 391, 392, and 395, require the implementation of the following:

A. Applicability

These requirements shall apply, as of January 1, 1996, to every County employee who operates a commercial motor vehicle and who is required by federal law to have a commercial driver's license. To the extent the requirements under the OTETA and corresponding regulations including all amendments, past and future, differ from the requirements set forth herein, the OTETA and its regulations shall control.

B. Definitions

1. Accident – an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in: (i) a fatality; (ii) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (iii) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.
2. Alcohol – the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
3. Alcohol use – the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.
4. Commercial Motor Vehicle (CMV) – any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle (1) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in the quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter 1, subchapter C.
5. Controlled Substance – any drug, chemical, or drug precursor that has the potential for abuse.

6. Driver – any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drives and independent, owner-operator contractors who are either directly employed by or under the lease to the County or who operate a commercial motor vehicle at the direction of or with consent of the County. For the purpose of pre-employment testing only, the term *driver* includes a person applying to the County to drive a commercial motor vehicle
7. Medical Review Officer (MRO) – a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the County’s drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test results together with his/her medical history and any other relevant biomedical information.
8. Performing (a safety sensitive function) – Any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety sensitive functions.
9. Refusal to submit (to an alcohol or controlled substances test) is when drivers:
 - a. 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.
 - b. 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 a pre-employment test, is not deemed to have refused to test;
 - c. Fail to provide a urine specimen for any drug test required by 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 for a pre-employment test is not deemed to have refused to test;
 - d. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of the driver’s provision of a specimen;
 - e. 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;
 - f. Fail or decline to take a second test the employers or collector has directed the driver to take;
 - g. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process. In the case or 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;

- h. 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), or
 - i. Is reported by the MRO as having a verified adulterated or substituted test result.
10. Safety sensitive function – any of those on-duty functions as follows:
- a. 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.
 - b. All time inspecting equipment as required by the Federal Motor Carrier Safety regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
 - c. All time spent at the driving controls of a commercial motor vehicle in operation.
 - d. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in a sleeper berth).
 - a. 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.
 - b. All time spent performing the driver requirements associated with an accident.
 - g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
11. Substance Abuse Professional (SAP) – A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

III. Prohibited Conduct

- No driver shall report for duty or remain on duty to perform safety sensitive functions while having an alcohol concentration of 0.04 or greater.

- No driver shall be on duty or operate a CMV while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over the counter), unless the packaging seal is unbroken.
- No driver shall use alcohol while performing safety sensitive functions.
- No driver shall perform safety sensitive functions within 4 hours after using alcohol.
- When required to take a post-accident test, no driver shall use alcohol within 8 hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- No driver shall refuse to submit to a post-accident alcohol or controlled substance test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a follow-up alcohol or controlled substances test to the extent such tests are required or permissible by law.
- No driver shall report for duty or remain on duty, requiring the performance of safety sensitive functions, when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV.
- No driver shall report for duty, remain on duty or perform a safety sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.

IV. Consequences for Violation of Prohibited Conduct

1. Drivers shall not be permitted to perform safety sensitive functions.
2. Drivers shall be advised by Greenville County of the resources available to them in evaluating and resolving problems associated with the misuse of alcohol or use of controlled substances.
3. Drivers will not be allowed to return to performing safety sensitive functions unless:
 - a. A driver is evaluated by a substance abuse professional (SAP) who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.
 - b. Before a driver returns to duty requiring performance of a safety sensitive function, he/she undergoes a return-to-duty test with a

breath alcohol level of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved controlled substance use.

- c. A driver identified as needing assistance in resolving problems associated with alcohol or controlled substance is evaluated by a SAP to determine that the driver has followed the rehabilitation program prescribed. The driver shall also be subject to unannounced follow-up testing shall be directed by the SAP, and consist of at least 6 tests in the first 12 months.

V. Other Impermissible Conduct

Drivers with an alcohol level of 0.02-0.039 must be removed from safety sensitive functions until their next duty period, but no earlier than 24 hours later.

Note: Drivers shall also be subject to any actions required by the Greenville County Drug-Free Workplace Policy Statement.

VI. Drug and Alcohol Testing

Required controlled substances testing will be performed for evidence of the following substances:

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

This testing will be conducted by a SAMSHA-certified laboratory on a split specimen urine sample obtained by a qualified collection group. Negative results will be reported by the Medical Review Officer directly to the designated Greenville County Administrator. Positive results will first be discussed in confidence with the employee by the Medical Review Officer (assuming the MRO has been able to contact the employee). If the Medical Review Officer concludes that there is a valid reason (i.e. prescription medication) then the positive test result will be reported as a negative. Otherwise, a positive result will be reported to the Greenville County Administrator.

A driver whose urine sample has tested positive has the option (within 72 hours of being notified by the MRO) to request to the MRO that the other portion of the split sample to be tested at another SAMSHA-certified lab. Greenville County is not obligated to pay for this second test. The driver is not authorized to request a re-analysis of the primary sample.

Required alcohol testing will be performed using a NHTSA-approved evidentiary breath testing device and will be conducted by a qualified Breath Alcohol Technician. An initial positive test result will require a second test to confirm the positive result. (The initial screening test may alternatively be conducted by a qualified Screening Test Technician using a NHTSA-approved screening device.) Results will be reported directly to the Greenville County Administrator.

Drivers will be subject to the following types of testing for both alcohol and controlled substances (with the exception that drivers are not subject to pre-employment testing for alcohol):

1. Pre-Employment Testing

Prior to the first time a driver performs a safety sensitive function, the driver shall undergo testing for controlled substances. No driver will be allowed to perform a safety sensitive function unless a verified negative result is received from the MRO on the controlled substances test.

Controlled substances testing may not be required if:

- a. The driver has participated in a drug testing program that meets the requirements of this rule within the previous 30 days; and
- b. While participating in that program, either
 - 1) Was tested for controlled substances within the past six months (from the date of application with the County) or
 - 2) Participated in a random controlled substances testing program for the previous 12 months (from the date of application with the County); and
- c. The County ensures that no prior employer of the driver of whom the County has knowledge has records of a violation of this part or the controlled substance use rule of another DOT agency within the previous six months.

The County shall obtain, pursuant to a driver's consent, information on the driver's alcohol tests with a concentration result of 0.04 or greater, positive controlled substances test results, and refusals to be tested within the preceding two years which are maintained by the driver's previous employers under FHWA Regulations. This information must be obtained and reviewed no later than 14 calendar days after the first time a driver performs safety sensitive functions. If it is not feasible to obtain the information prior to the driver performing safety sensitive functions, the County may not permit a driver to perform safety-sensitive functions before expiration of the 14 day period or before the above information has been obtained, the County must still obtain the information. The County must provide to each of the driver's employers within the two preceding years the driver's written authorization for release of the above information. The release of any information under this part may take the form of personal interviews, telephone interviews, letters or any other method of obtaining information that ensures confidentiality. A written, confidential record with respect to each past employer contacted must be maintained. A driver may not be used to perform safety sensitive functions if information on the driver's alcohol test with a concentration of 0.04 or greater, verified positive controlled substances test result, or refusal to be tested are not accompanied with information on subsequent substance abuse professional evaluation and compliance with return-to-duty testing.

2. Post-Accident Testing

As soon as practicable following an accident involving a commercial motor vehicle, the County shall test for alcohol and controlled substance, each surviving driver, who was performing safety sensitive functions with respect to the vehicle if either:

- a. The accident involved a fatality; or

- b. The driver receives a citation within 8 hours of the accident under State or local law for a moving traffic violation arising from the accident. If the accident involved:
 - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the County to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency care.

Alcohol Tests:

If an alcohol test is not administered within two hours following the accident, the County shall prepare and maintain on file a record stating the reason(s) the test was not promptly administered. If a test is not administered within 8 hours following the accident then attempts to administer the test shall be ceased and the same record stated above shall be prepared and maintained.

Controlled Substance Tests:

If a controlled substance test is not administered within 32 hours following the accident then attempts to administer the test shall be ceased and the County shall prepare and maintain on file a record stating the reason(s) the test was not promptly administered.

The County shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

The results of a breath or blood test for the use of alcohol 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 meet the requirements of this section, provided such tests conform to applicable Federal, State or local requirements, and that the results of the test(s) are obtained by the County.

3. Random Testing

The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method (i.e., computer-based random number generator that is matched with drivers' identifying numbers such as Social Security numbers). The County shall ensure that random alcohol and controlled substances testing are unannounced and spread reasonably throughout the calendar year. Under the selection process used, each driver in the pool shall have an equal chance of being tested each time selections are made. The minimum number of total random tests administered each year will be at percentages rates (of the average number of driver positions) independently designated by the Federal Highway Administration for alcohol and

controlled substance testing (currently 10% and 50% respectively). These rates are subject to change in accordance with applicable federal law.

The County shall require that a driver selected for random testing proceed immediately to the testing site upon notification. If the driver is performing a safety sensitive function at the time of notification, the County shall ensure that the driver cease to perform the safety sensitive function and proceed to the test site as soon as possible. A driver shall be randomly tested for alcohol only while the driver is performing safety sensitive functions, just before the driver is performing safety sensitive functions, or just after the driver has ceased performing safety sensitive functions.

4. Reasonable Suspicion Testing

The County shall require a driver to submit to an alcohol and/or controlled substances test when there is reasonable suspicion to believe that the driver has violated the prohibited conduct of section III (with the exception of section III - #2, mere possession of alcohol) with respect to alcohol and/or controlled substances respectively. The determination that reasonable suspicion exists must be based on specific, contemporaneous, articulate observations concerning the appearance, behavior, speech or body odors of the driver. For controlled substances these observations may include indications of the chronic and withdrawal effects of controlled substances. The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or Greenville County official designated to determine whether reasonable suspicion exists and who is trained in at least 60 minutes on alcohol misuse and at least 60 minutes on controlled substances abuse. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and controlled substances use.

Alcohol Tests:

Reasonable suspicion alcohol testing is authorized only if observations are made during, just before, or just after the period of the work day the driver is required to be in compliance. Reasonable suspicion alcohol testing may be done during, just before, or just after the driver performs a safety sensitive function, and cannot be conducted by the person who made the determination that reasonable suspicion exists. If an alcohol test is not administered within two hours following the observations, the County shall prepare and maintain on file a record stating the reason(s) the test was not promptly administered. If a test is not administered within 8 hours following the observations then attempts to administer the test shall be ceased and the same record stated above shall be prepared and maintained. A driver shall not be permitted to perform or continue to perform safety sensitive functions until an alcohol test is administered and the driver's alcohol concentration measures less than 0.02, or 24 hours have elapsed, following the determination of reasonable suspicion for prohibited conduct violations concerning alcohol. With the exception of the above statement, the County shall not take any action against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit the County with independent authority of this part from taking any action otherwise consistent with law.

Controlled Substance Tests:

A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or Greenville County official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is first.

5. Return-To-Duty Testing

The County shall ensure that before a driver returns to duty requiring the performance of a safety sensitive function after engaging in prohibited conduct concerning alcohol, the driver shall undergo a return-to duty alcohol test with a result indicating an alcohol concentration less than 0.02, unless otherwise provided by law.

Likewise, the County shall, also, ensure that before a driver returns to duty requiring the performance of a safety sensitive function after engaging in prohibited conduct concerning controlled substances, the driver shall undergo a return- to- duty controlled substances test with a result indicating a verified negative result for controlled substances use, unless otherwise provided by law.

6. Follow-up Testing

Upon return to duty requiring the performance of a safety sensitive function for a driver who engaged in conduct prohibited in section III and was determined by a substance abuse professional to be in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the County shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the substance abuse professional. The driver shall be subject to a minimum of six follow-up alcohol and/or controlled substance tests in the first 12 months. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. Alcohol follow-up testing shall be conducted only when the driver is performing safety sensitive functions, immediately prior to performing safety sensitive functions, or immediately after performing safety sensitive functions.

VII. Referral, Evaluation, and Treatment

Each driver who has engaged in conduct prohibited by section III shall be advised by the County designee 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.

Each driver who engages in conduct prohibited by section III shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.

Before a driver returns to duty requiring the performance of a safety sensitive function after engaging in conduct prohibited by section III, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance. In addition, each driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use; shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program

prescribed under the previous paragraph; shall be subject to unannounced follow-up alcohol and controlled substances tests administered by Greenville County following the driver's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the driver's return to duty. The driver may be directed to undergo return-to duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that it is necessary for that particular driver.

VIII. Retention of Records

Unless otherwise required by law, the following records of this program shall be maintained by the County or an appropriate agent of the County in a secure location with controlled access.

<u>Document to be maintained</u>	<u>Period Required to be Maintained</u>
Alcohol test results indicating a breath alcohol concentration of 0.02 or greater	5 years
Verified positive controlled substance test results	5 years
Refusals to submit to required alcohol or controlled substance tests	5 years
Required calibration of Evidential Breath Testing Devices (EBT's)	5 years
Substance Abuse Professional's (SAP's) evaluations and referrals	5 years
Annual calendar year summary	5 years
Records related to the collection process (except calibration) and required training	2 years
Negative and canceled controlled substance test results	1 year
Alcohol test results indicating a breath alcohol concentration less than 0.02	1 year

Except as required by law or expressly authorized or required by Title 49 Code of Federal Regulations (CFR) Parts 382, 391, 392, and 395, the County shall not release driver information that is contained in these records.

A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his/her alcohol or controlled substances tests.

IX. Additional

The County shall provide educational materials that explain the requirements of these regulations and the employer's policies and procedures with respect to meeting these requirements. All drivers are required to sign a statement certifying that he/she has received a copy of these materials. Signing of this statement or any other required consent forms related to these procedures should in no way imply a contract for employment.

All employees to be tested shall be required to sign a consent form for alcohol and controlled substances testing. Refusal to submit to the required testing of these regulations is a violation of the prohibited conduct and will be cause for disciplinary action up to and including termination. Employment applicants who refuse to submit shall not be considered for hire.

The County "Compliance Official" is designated to answer questions regarding the federal regulations and their application at the County.

902. Drug Free Work Place

The Greenville County Board of Supervisors is committed to protecting the health, well-being and safety of its employees and all people who come in contact with its workplace(s) and property, and/or use its products and services. Recognizing that drug and alcohol abuse pose a direct and significant threat to this objective, it is the policy of the Greenville County Board of Supervisors to maintain a drug-free work place. In addition, the Board is obligated to comply in full measure with the requirements of the Drug-Free Work Place Act of 1988 on contracts and grants issued by any Federal agency.

Every employee will be given written notification of the statements prescribed in the Drug-Free Work Place Act of 1988. The applicable form is attached as Exhibit I.

To further insure that all employees are aware of and understand the Board's policies and procedures regarding the need to have and maintain a drug-free work place, all employees will participate in an orientation program conducted under the overall supervision of the County Administrator.

In addition to receiving an explanation of such policies and procedures, employees will be provided with other related literature which the Board determines will aid in alerting employees to the dangers concerning drugs.

The County Administrator is also responsible for insuring that posters and other written notices, as may be appropriate from time to time, are issued. Additionally, dates shall be recorded in County files documenting when an employee has completed the orientation program.

DRUG-FREE WORK PLACE ACT POLICY STATEMENT

The use, sale, transfer or possession of illegal and/or illicit drugs or controlled substances without a prescription on any of the County's premises or at any time during which services are being performed for or on behalf of the County is strictly prohibited. Violation of this policy may result in disciplinary action, including termination of employment. In addition to any disciplinary action, the County may require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local law enforcement, health or other appropriate agency.

For employees working on any Federal contract or grant, the Board is required by law to notify the Federal contracting agency within ten (10) days after learning of an employee's criminal drug statute conviction in the work place.

As a condition of employment on such contract or grant, all employees must abide by the terms of this policy; and agree to notify the board of Supervisors of any criminal drug statute conviction (including a plea of nolo contendere), for a violation occurring in the work place, no later than five (5) days of such conviction.

COMMERCIAL DRIVER'S LICENSE EMPLOYEE AUTHORIZATION

- I. I hereby consent to drug and alcohol test(s) administered by *Greenville County* as required by Title 49 Code of Federal Regulations (CFR) Parts 382, 391, 392, and 395.
- II. As part of pre-employment requirements I hereby authorize *Greenville County* to obtain employment records from any prior employer, as required by 49 CFR Part 382.413, regarding:
 - a) Results of any DOT required drug or alcohol test administered in the previous two (2) years to my employment with *Greenville County*; and
 - b) Any violations of the DOT alcohol or controlled substance rules during the same time period.
- III. I hereby acknowledge receipt this day of the written policy on drug use and alcohol misuse and educational material on this subject and agree to abide by the requirements of this policy.

I authorize a photocopy of this document to be as acceptable as an original signed document.