

NESHOBA COUNTY, MISSISSIPPI'S ALCOHOL AND CONTROLLED  
SUBSTANCES POLICY FOR TRANSPORTATION EMPLOYEES

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**Policy Statement and Summary:** Neshoba County ("the County") is adopting this policy for the County's transportation employees. These policies are intended to increase safety and to deter and detect the use of controlled substances and alcohol by transportation employees who are employed in safety-sensitive positions, such as bus drivers. This policy is being adopted under the requirements of regulations from the Federal Highway Administration ("FHWA") and other agencies of the Federal Department of Transportation. The regulations that require this policy and specify most of its contents are found in the Code of Federal Regulations, at 49 CFR Parts 40, 382, 391, 392 and 395, all as amended in 1994. Whenever those regulations change, the terms of this policy are also changed automatically.

This policy prohibits all use of controlled substances by bus drivers and other County employee-drivers of commercial motor vehicles who are subject to commercial driver's license requirements. These drivers are also prohibited from possessing alcohol while on duty and from using alcohol for a period beginning four hours before going on duty and ending when they go off duty. To further this policy, the County will conduct drug and alcohol testing as required in the regulations. Those who test positive in violation of this policy will be terminated. In addition, those who test positive cannot again drive a commercial motor vehicle for any employer until they have been evaluated by a Substance Abuse Professional for potential treatment needs.

This written policy will outline in detail the policy the County is adopting to comply with the Federal Regulations. All affected employees and prospective employees must carefully review this policy and sign an agreement to be bound by its terms as a condition of employment. If you have any questions about this policy or how it will affect you, contact Benji Coats, who will serve as the supervisor of the County's drug and alcohol program.

**Who Is Affected:** The drug and alcohol testing and other requirements of this policy

apply to all County employees who are engaged as drivers of commercial motor vehicles and who are subject to commercial driver's license requirements. This includes the driver of any bus or other vehicle designed to carry 16 or more passengers, including the driver. Also included is any driver of a vehicle with a gross vehicle weight rating of more than 26,000 pounds or a vehicle/trailer combination with a total vehicle weight of at 26,001 pounds if the vehicle alone has a gross vehicle rating of 10,000 or more pounds. From this point forward in this policy, the word "Driver" means employee drivers of commercial motor vehicles who are subject to commercial driver's license requirements.

**What does "on duty" mean:** This policy and the federal regulations that require it often use the term "on duty" in conjunction with prohibited conduct or drug and alcohol testing. Whenever used in this policy, the term "on duty" has the meaning given to it by the Department of Transportation Regulations found in 49 CFR § 395.2(a). "On duty" includes all the time a Driver is preparing to work or is working until relieved from all work responsibility. It includes time spent awaiting dispatch, inspecting equipment, assisting with loading or unloading a commercial vehicle, as well as time spent repairing, obtaining assistance for, or remaining in attendance with a disabled vehicle. Whenever a Driver is "on duty" as defined in this section, that Driver is considered to be performing safety-sensitive functions and is subject to all aspects of the County's policies and the regulations on which it is based.

**Effective Date:** This policy and the testing and other requirements of it go into effect on January 1, 1996. After that date, all Drivers will be subject to drug and alcohol testing and to the prohibitions of this policy.

**Prohibited Conduct:** Drivers are prohibited from using controlled substances and will be subject to testing for Marijuana, Amphetamines, Opiates, Cocaine, and Phencyclidine (PCP). Drivers are prohibited from possessing alcohol while on duty. In addition, Drivers are prohibited from consuming alcohol while on duty, for a period of four hours before going on duty and for a period of eight hours after being involved in an accident. Drivers are also prohibited from

refusing to consent to this policy or to an alcohol or drug test under the terms of this policy.

**Effects of Violations:** Any Driver found in violation of this policy through a positive drug or alcohol test or otherwise will be terminated as outlined in the County's employee handbook (see below). In addition, the Federal regulations mandate that a violator cannot again drive a commercial motor vehicle until the Driver has been evaluated by a Substance Abuse Professional ("SAP"), has successfully completed any treatment or rehabilitation recommended by the SAP and has successfully passed a return to duty drug test, as well as any periodic follow-up tests recommended by the SAP. **Any Driver found in violation of this policy through a positive drug or alcohol test or other prohibited conduct will be immediately terminated from employment with the County. (NOTE: The County has chosen mandatory termination as the disciplinary measure on its own authority, and termination is not mandated by Federal Regulations.)**

**Drug and Alcohol Testing:** In order to detect and deter violations of this alcohol and controlled substances policy, the County is implementing a drug and alcohol testing program. This testing program is required by the FHWA regulations and Drivers must participate in the testing as a condition of employment in the County. The County has contracted with MEA Drug Testing Consortium, a physician owned company which specializes in drug and alcohol testing services in compliance with Federal Regulations.

Controlled substances testing uses a urine specimen provided by the driver. Alcohol testing utilizes a breath testing machine into which the Driver will blow. This machine is similar to the "breathalyzer" machines utilized by law enforcement personnel. Testing procedures and security precautions are discussed in detail in Appendix "A" to this policy. This section will only summarize how testing is done in the most general terms. Drivers must be familiar with the detailed statement of procedures set out in Appendix "A" to this Policy.

Controlled substances testing will be limited to tests for (1) Amphetamines; (2) Cocaine; (3) Marijuana; (4) Opiates; and (5) Phencyclidine (PCP). The terms "drug" and "controlled

substances" are used interchangeably in this Policy and refer to the 5 substances just listed. No controlled substances test will be ruled as a verified positive until the Driver's urine specimen has been tested once by a federally certified laboratory and found positive, has been tested again by the laboratory and confirmed positive and then has been reviewed by a Medical Review Officer ("MRO"). The MRO gives the Driver an opportunity to explain any circumstances which might indicate the test is invalid or otherwise does not represent a violation of the County's policy, such as use of prescription medications pursuant to a doctor's order. The MRO for the County will be a licensed medical or osteopathic doctor with particular knowledge of substance abuse.

Since alcohol is not an illegal substance, the County's policy does not prohibit or test for responsible alcohol use by Drivers of legal drinking age. Testing will be conducted only at times when the Driver is either on duty or is about to come on or off duty, and the testing levels for alcohol are designed to register positive only when a Driver has consumed alcohol within four hours of reporting for duty or while on duty.

There are six different circumstances under which Drivers will be subject to testing. However, all drug and alcohol tests will be conducted according to strict privacy protections and safety/security procedures that are required by Federal law. These are explained in detail in Appendix "A" to this Policy.

## **THE TESTS**

### **Pre-employment**

The County will conduct pre-employment drug and alcohol testing for employee applicants who will be Drivers and no person shall be allowed to perform safety-sensitive functions (i.e., on-duty Driver functions) until they have satisfactorily passed both an alcohol and drug screen. The only exceptions to this requirement occur when a Driver has been part of another FHWA testing program within the previous six months and the employer documents through contact with previous employers that the driver has not been guilty of any prior violations of the other employer's program.

### **Post-Accident**

Post Accident testing for drugs and alcohol is also required for each surviving Driver if the accident involved the loss of human life or if the Driver receives a citation for a moving traffic violation arising from the accident. The alcohol test is to be administered within eight hours following the accident. If a test is not administered within two hours, the County must prepare and maintain a written statement of the reasons for the delay. If the test is not performed within eight hours of the accident, there shall be no further attempts to administer an alcohol test and the records shall reflect why no test was administered. Drug testing, on the other hand, must be conducted within 32 hours following the accident.

Drivers must remain readily available for testing after an accident, though necessary medical attention will not be delayed. Your supervisor will provide instructions to you as to how to conduct yourself after an accident in order to help comply with post accident testing requirements. This information is summarized in Appendix "B" to this Policy. If a local law enforcement official conducts a drug and/or alcohol test after an accident in compliance with federal, state or local law and provides the results of those tests to the County, the results of those tests will satisfy post accident testing requirements of this policy. If the test is positive, it will be a violation of this policy.

### **Random**

The County will conduct random testing for drug and alcohol. Random tests will be spread reasonably throughout the calendar year. When a person is notified of selection for random testing, he must proceed immediately to the designated testing site. Selection for random testing will be made by MEA using a random number generator computer program. All Drivers are subject to selection every time, even if that Driver has earlier been selected for a random test.

Initially, the random testing rate for alcohol will be 25% of the average number of driver positions. This rate means that the County will conduct a number of tests at least equal to the required percentage of Driver positions. For drug testing, the requirement is 50% of the average

number of driver positions, though a proposed DOT regulation would eventually lower the drug testing percentage rate. For now, however, drug and alcohol random testing will remain at different rates. Some Drivers chosen for random testing will be tested for both drugs and alcohol, some will be tested only for drugs. Before signing the consent form to be tested, Drivers will be told whether the test is for drugs, alcohol or both.

From year to year, the FHWA may change the random testing rate and the County will be required to test at whatever rate the FHWA sets. The Federal Highway Administration, through audits, will determine on an industry-wide basis the annual percentage rate of positives for random alcohol testing. If, in two consecutive calendar years, the positive rate is less than .5%, the rate will decrease to 10% of driver positions. If, however, in a two year period, the rate for each year is less than 1% but equal to or greater than .5%, the rate of testing will be 25%. On the other hand, the driver position percentage rate may be increased if in any one calendar year the positive rate increases to more than .5%. For example, if the rate were lowered to 10%, and then the following calendar year the positive rate was .7%, the testing rate would return to 25% of driver positions. If the positive rate were to increase to 1% or greater, alcohol testing would be conducted at a 50% rate. Random rates will be published in March of each year by the FHWA for each industry segment.

### **Reasonable Suspicion**

The County will also conduct reasonable suspicion testing for both alcohol and drugs. A decision to conduct reasonable suspicion testing must be based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech or body odors of a Driver consistent with drug or alcohol use. The decision must be made by a supervisor who has received training in detecting such conduct. All County supervisors who may make reasonable suspicion testing decisions will be provided training in detection in accordance with the FHWA regulations.

Like the post accident testing for alcohol, reasonable suspicion testing for alcohol should

be conducted within two hours of the determination to test but in no event later than eight hours after that determination. If it takes more than two hours to get the test, documentation must be maintained explaining the delay and no alcohol test shall be conducted more than eight hours after selection. A written record must be made of the observation leading to the reasonable suspicion test and it must be made within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

### **Return to Duty/Follow-up**

The final testing provided for in the regulations is return to duty testing and follow-up testing. Return to duty testing is required for any Driver who has previously violated this policy or a similar policy mandated by the FHWA, such as by testing positive for drugs or alcohol. If a Driver has tested positive for either, the Driver must, in addition to other requirements, pass another test before returning to duty as a commercial motor vehicle driver for any employer. In addition, once back on duty, the driver is subject to unannounced follow-up alcohol and/or controlled substances testing for a period of up to 60 months, all as directed by the Substance Abuse Professional ("SAP") who has evaluated the employee prior to the return to work. (This required evaluation is discussed in more detail below under the heading "SAP Referral and Evaluation").

**Effect of a Positive Test or Refusal to Be Tested:** A positive test result for alcohol or any of the five controlled substances is a violation of this policy. Any refusal to submit to a test when required by this policy is also treated as a positive test result. Whenever this policy talks about a positive test, it includes a refusal to submit to testing as well as a confirmed and verified positive test result measured in accordance with the procedures and cut-off levels specified in the FHWA and DHHS regulations.

A Driver will be considered to have refused to submit to a test if: (1) the Driver refuses to sign a consent form at the time the test is to begin; (2) the Driver refuses to co-operate in the testing process; or (3) the Driver is unable or unwilling to provide the required minimum breath

and/or urine samples and there is no plausible medical explanation for the failure, as determined by the MRO.

As was stated above (under the heading "Effects of Violations"), testing positive is a violation of this policy and will result in termination. **Any Driver found in violation of this policy through a positive drug or alcohol test or other prohibited conduct will be immediately terminated from employment with the County. (NOTE: The County has chosen mandatory termination as the disciplinary measure on its own authority, and termination is not mandated by Federal Regulations.)** In addition, Drivers will be subject to the mandatory SAP Referral and Evaluation Requirements discussed in the next section.

**SAP Referral and Evaluation:** Any Driver who tests positive in this or any other FHWA testing program must be referred to a Substance Abuse Professional or "SAP". The SAP must be a doctor, therapist or counselor trained and qualified to evaluate and treat substance abuse (including alcohol abuse) problems. Before a Driver can again drive a commercial motor vehicle for any employer, the Driver must be evaluated by the SAP to determine if rehabilitation, counseling or other treatment is needed by the Driver. If so, the Driver must satisfactorily complete the treatment program and must pass a return to duty drug and alcohol test. If the Driver returns to a Driver position, the employee is subject to periodic and unannounced follow-up drug and alcohol testing in addition to the particular employer's normal alcohol and drug testing program.

**Special Alcohol Rule:** To be considered a confirmed positive alcohol test, the Driver's level must register .04 or greater. However, a special rule applies to Drivers whose alcohol level is less than .04 but greater than .02. This result does not trigger all of the effects noted above. Instead, the Driver must not drive or perform any safety-sensitive duties until the later of 24 hours or the beginning of his next scheduled shift.

**Pre-employment Screening and Background Checks:** As a condition of applying for a Driver position, an applicant must consent in writing to a pre-employment drug and alcohol test



and to a two year background check by the County of the applicant's previous employers to determine whether the applicant has tested positive for drugs or alcohol or has otherwise violated the drug and alcohol policies of a previous employer. The County will be required to respond to similar inquiries from other prospective employers in the event a County Driver or a former County Driver applies for work with another employer. These requirements are designed to prevent Drivers who test positive from applying elsewhere for a job without first completing the required follow-up evaluations and treatments specified in the federal regulations and explained in the preceding section of this policy.

**Notification of Test Results to Drivers:** The results of a Driver's drug or alcohol test will be reported to him by his supervisor. If the test is positive, the Driver will be informed which substance or substances for which the test is positive. Employee applicants wishing to have the results of their drug and alcohol tests must request them in writing within 60 days of being informed of the disposition of their application for employment.

**Access to Records:** The FHWA regulations require the county to keep detailed records of its drug and alcohol testing program. However, these records are confidential and can only be released upon written consent of the Driver involved or by regulatory or court order. If a Driver makes a claim to a fact finder, such as a workers compensation claim, the County may turn over results of drug or alcohol tests that relate to the claim. A driver may review or obtain copies of his or her own drug and alcohol testing records by requesting them in writing and paying the cost of the copies. A Driver's supervisor will assist him, upon request, in making an appropriate request for a copy of the records.

**Employee Information and Training:** As noted above, supervisory personnel who may be involved in making reasonable suspicion testing determinations must receive required training in making those determinations pursuant to FHWA regulations. In addition, all affected Drivers are being provided information about the effects and consequences of alcohol and controlled substance use/abuse on personal health, safety in the work environment as well as information

regarding manifestations and causes that may indicate controlled substance use/abuse.

Information being provided also discusses available methods of intervening when an alcohol or controlled substances problem is suspected. The information, which is summarized in Appendix "C" to this Policy, is a part of the Policy and all Drivers are required to carefully review it in conjunction with reviewing this Policy. Drivers should direct any questions regarding this information to their supervisor or to Benji Coats, the designated person in charge of the County's testing program.

## APPENDIX "A"

### TESTING PROCEDURES AND SAFEGUARDS

**Introduction:** The County has contracted with MEA Medical Clinics Drug Testing Consortium to provide all the County's drug and alcohol testing services, including our MRO's. This APPENDIX will outline the procedures a Driver can expect when called upon to give a drug and/or alcohol test specimen. These procedures are required by Federal law. If you believe that a test was conducted in a manner other than as specified in these procedures, please inform your supervisor immediately. These procedures are specifically designed to safeguard a Driver's privacy during the testing process and to assure accurate test results.

MEA provides complete alcohol and drug testing at its contract clinic in Philadelphia, Mississippi, and at various other locations throughout the State, and also has the capability to conduct testing using mobile units. For controlled substances testing, MEA provides urine specimen collection services, transportation to and receipt of results from federally certified laboratories, and qualified physicians to serve as Medical Review Officers or other consulting physicians to review and evaluate drug testing results. For alcohol testing, MEA uses federally approved and certified evidential breath testing devices ("EBTs") and Breath Alcohol Technicians ("BATs") trained in a program approved by the National Highway Traffic Safety Administration.

**Initial Presentation:** A person required to give a drug or alcohol testing specimen at an MEA facility will be treated courteously and with individualized attention to minimize any stress or anxiety associated with the testing procedure. The MEA employee conducting the drug testing specimen collection process is called a Collection Site Person ("CSP") and the MEA employee who conducts alcohol testing is called a Breath Alcohol Technician ("BAT"). MEA's BATs and CSPs will not use language that might be considered offensive or accusatory, but will strive to be courteous at all times to the person to be tested. In addition, MEA's BATs and CSPs will follow the procedures outlined in this policy and procedure statement to assure the integrity and quality

of the alcohol and drug testing process, thereby maximizing accurate test results.

A particular CSP or BAT works with only one person to be tested at a time. Prior to beginning the testing process, each person must show proof of identification through a driver's license or other picture-bearing identification card. If positive proof of identification is not possible, MEA will not proceed with specimen collection or any aspect of alcohol or controlled substance testing.

### **DRUG TESTING**

Since the procedures for alcohol testing are different from those for drug testing they will be discussed separately. Drivers are subject to both types of tests and will be informed by MEA personnel whether the test is for alcohol, drugs or both.

**Specimen Collection Process:** After a Driver has presented proper proof of identification, the CSP will conduct a short interview to document the relevant information about the person to be tested. (Throughout this policy and procedure statement, the person to be tested is referred to as the "Driver"). Relevant information from this interview and from the complete specimen collection process is documented on a carbonless custody and control form, which identifies the specimen donor, the particulars of the collection process, and the transfer of the specimen to the appropriate lab or other facility for testing. In addition, the Driver will be provided a consent form to sign, giving written consent to the testing procedure. If an employee refuses to consent to or revokes his consent at any point, MEA will not proceed with the process and the County will consider this a Refusal to Submit and a violation of the County's policy.

After the initial interview, the Driver will be requested to remove any coat or any other unnecessary outer garments that might conceal materials that could be used to alter or affect the specimen to be given. In any event, the Driver will be allowed to retain his or her wallet during the process of urine collection or, if they prefer, their wallet can be securely locked in a storage compartment at the clinic.

The specimen is collected in a clean, single use, sealed and securely wrapped container.

MEA keeps a supply of these containers on hand. Before giving the specimen collection container to the Driver, the CSP will allow the Driver to wash and dry his or her hands in the view of the CSP. The CSP will remain with the Driver and observe him to make certain that the Driver has no access to water or other substances that might be used to alter the specimen.

The CSP will then give the specimen collection container to the Driver and place him in the collection room, where the Driver will fill the collection container with at least 45 milliliters of urine. If the Driver is unable to urinate or is unable to provide the required minimum urine amount of 45 ml, the specimen collection process must be begun again, and the CSP will assist the employee by providing fluids to drink. Any urine sample collected that is less than 45 ml will be discarded since MEA does not combine urine from two collections to reach the required volume. The Driver will be allowed a reasonable time (not to exceed two hours) to consume fluids (not to exceed 24 ounces) and provide a specimen. If the Driver is unable to provide a specimen in two hours, a physician will evaluate him to determine if his problem is a medical one or constitutes a refusal to cooperate. The physician will report the results of this evaluation to the County. (NOTE: There will be no such medical evaluation for pre-employment tests unless the County agrees in advance to it.)

Unless circumstances require (as outlined below), there will be no direct observation of the Driver while he is providing the urine specimen. All aspects of the collection process are designed to maintain the modesty and privacy of the Driver. No unauthorized persons shall be allowed to be present with the specimen in the specimen collection area at any time during the procedure. After the Driver returns with the specimen in the collection container, he will be allowed to wash and dry his hands.

After the Driver delivers the containerized specimen to the CSP, the specimen will remain in the view of the Driver at all times until it is split into two separate specimen containers, labeled and sealed. The Driver will observe the sealing and labeling of the specimen containers, by the CSP and the Driver will initial the identification labels on the bottles to certify that they

contain his specimen. The specimen containers are then sealed in the appropriate mailing envelope or container and remain under the control and supervision of the CSP at all times until the package is prepared for shipment to the laboratory. After the container has been sealed and initialed by the Driver, and the custody and control form has been completed by the CSP, the urine specimen collection process is complete.

**Split Specimen Collection:** Using two separate containers for the Driver's urine specimen is known as the split specimen collection method. With this method, the specimen is split by the CSP into a "primary" specimen consisting of at least 30 ml and a second "split" specimen containing at least 15 ml of urine. Both are labeled and forwarded to a DHHS certified lab as outlined in the preceding section. All initial and confirmation testing conducted by the certified laboratory will be conducted on the primary specimen only. However, the laboratory must also maintain the split specimen in secure storage.

If a Driver is informed by the Medical Review Officer that the result of the laboratory's analysis of his primary specimen is positive, the employee has 72 hours from the time he is informed of the verified positive result to request an analysis of the split specimen being held by the laboratory. Any request for analysis of the split specimen made after this 72 hour period will not be honored unless the MRO, in his discretion, determines after discussion with the Driver that there were unusual circumstances that caused an excusable delay in requesting the test. Any test of the split specimen pursuant to a Driver's request will be at the expense of the Driver.

If the Driver makes a timely or otherwise proper request for a split sample test, the MRO must inform the lab in writing and the lab must immediately forward the split specimen to a second certified laboratory, with the seal intact and with proper chain of custody documentation, as well as a copy of the MRO's request. The second lab will perform the split specimen test and will report the results to the MRO. If the split test does not confirm the results of the first test, the test is cancelled. However, the County and the MRO need not await the results of the split specimen test to initiate administrative action and SAP referral or to take such other actions as

are provided for in the County's drug and alcohol testing policy.

**Other Security Precautions:** In addition to the security precautions inherent in the specimen collection and Driver identification system outlines above, the following additional precautions are used by MEA to maximize the integrity and accuracy of the drug testing specimen collection process:

A. Toilet bluing agents are used to tint the water in the toilet located in the collection room where the Driver provides the actual specimen. All other sources of water in that area are secured so that the Driver cannot obtain access to them. In addition, the Driver is not allowed to flush the commode while in the collection room, because flushing may be used to dispose of evidence of materials used to contaminate or tamper with the specimen. If the seal on the commode that secures it against flushing is broken or if flushing sounds are heard from the specimen collection room, that specimen will be considered questionable and the Driver must submit to a retest.

B. While the CSP will remain courteous and respectful of the Driver at all times, any unusual or suspicious actions or behavior on the part of the Driver will be noted on the custody and control form.

C. Within four minutes after collection of the specimen, the temperature of the specimen will be measured to make certain that it is the acceptable range of 32.5° to 37.7° centigrade (90.5°-99.8° Fahrenheit). In addition, the CSP will check the color of the urine specimen and look for any evidence of contamination or tempering. Any unusual appearance of the urine or unusual temperature will be noted on the custody and control form.

D. In any instance where the CSP suspects that the specimen was tampered with, the test specimen will still be sent to the laboratory, but a new test will be scheduled, including a test under direct observation if the County consents to direct observation. (Direct observation testing is discussed below).

E. After the specimen has been split, sealed, labeled, and placed in the mailing

envelope or other shipping container, it will either be shipped immediately or stored securely in a locked space under the control of MEA and the appropriate CSP. The completed custody and control form, including the chain of custody portions, will be completed and certified by the CSP and placed in the shipping container with the specimen which is being shipped or stored for shipping.

F. From the time the Driver is initially identified until the specimen has been collected, split, labeled, initialed, and sealed, the CSP is not allowed to leave the specimen collection area at any time. If it becomes necessary due to emergency or other unavoidable circumstance for the CSP to leave, any collection begun at that point will be nullified and the test must be begun again.

**Direct Observation Testing:** Since the MEA drug testing specimen collection process seeks to protect the privacy and modesty of all Drivers tested, direct observation of the person giving the specimen during the time they are providing it is not part of the normal collection procedure. However, under certain circumstances, direct observation specimen collection may be necessary to assure the integrity of the drug testing process. Whenever direct observation testing is required under the guidelines set forth below, the person observing the Driver giving the specimen will be of the same gender as the Driver. The following guidelines will be used in determining whether direct observation collection is necessary and, **in all cases**, the decision to conduct direct observation collection will be made only after consultation with and approval by the County or a higher-level supervisor of the CSP.

The following circumstances are the **exclusive** grounds for direct observation testing:

A. The Driver has presented a urine specimen that falls outside the acceptable temperature range (32.5° to 37.7° Celsius; 90.5°-99.80° Fahrenheit) **and** (a) the Driver declines to provide a measure of oral body temperature; **or** (b) body temperature is measured and it varies by more than one degree Celsius or 1.8° Fahrenheit from the temperature of the specimen;

B. The last urine specimen provided by the Driver (i.e., on a previous occasion) was



determined by the laboratory to have a specific gravity of less than 1.003 and Creatinine concentration below .2g/L;

C. The CSP observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the specimen (for example, substitute urine in plain view, blue dye in specimen presented, etc.); or

D. The Driver has previously been determined to have used a controlled substance without medical authorization and the particular test is being conducted under FHWA approved follow-up testing upon or after return to service.

**Medical Review Officer:** MEA clinics are staffed with qualified physicians who serve as Medical Review Officers ("MRO") (for federally required drug testing) and who assist other, voluntary drug testing programs (not federally mandated) in evaluating laboratory results of drug testing. MEA physicians have served as MROs in numerous testing programs for several years and are familiar with the DHHS, DOT, and FHWA requirements for interviewing Drivers who test positive to determine whether a particular test result is "confirmed positive," and they also maintain the required drug testing records for blind sampling and composite reporting, as well as individual test results.

A report on each person tested will be sent to the MRO by the laboratory. This report will identify the drugs tested for, whether positive or negative results were obtained, the specimen number assigned, and the drug testing laboratory specimen identification number.

A positive laboratory test result does not automatically identify a Driver, applicant, or independent contractor driver as having used drugs in violation of a DOT or FHWA rule. Instead, the MRO reviews the laboratory results along with the circumstances of the tested employee to determine whether the test is in fact a "confirmed positive". This review must be performed prior to reporting the test results to the Company's administrative officials. The MRO, being a licensed physician with knowledge of substance abuse disorders, examines alternate medical explanations for any positive laboratory test results. This generally includes conducting

a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors revealed by the Driver.

Prior to making a final decision to verify a positive test result for an individual, the MRO gives the individual an opportunity to discuss the test results. The MRO may verify a test as positive without having communicated directly with the Driver about the tests in three circumstances:

1. The Driver expressly declines the opportunity to discuss the test.
2. More than five days have passed since the date the driver was contacted by a designated Company representative and informed to contact the medical review officer as soon as possible; or
3. Other circumstances provided for in Department of Transportation Agency Drug Testing Regulations.

If the MRO is unable to reach the individual directly, the MRO will contact the designated official of the County who, in turn, will contact the employee. In the case where the Driver has failed to contact the MRO for more than five days since the date the Driver was contacted by the designated Company representative, the MRO may report the test results as "confirmed positive". However, the MRO may still reopen the verification process if the Driver contacts the MRO and presents information that his delay in getting in touch with the MRO resulted from serious illness, injury or other unavoidable circumstances.

The purpose of the MRO interview is to allow the driver to present information concerning a legitimate explanation for the positive laboratory test. If after such action, the medical review officer concludes that there is a legitimate explanation of the positive test, the medical review officer may declare the test to be negative. Otherwise, the result will be verified as a "confirmed positive". Following verification of a positive test result, the medical review officer will refer the case to the County's designated management official empowered to recommend or take administrative action.

The medical review officer is the only person authorized to order a re-analysis of the original sample or a test of the split specimen. Authorization for a split specimen test may be

made by the Driver within 72 hours of his or her having received actual notice of a positive test. If the retest or split specimen test is negative, the medical review officer will cancel the test. (See section above regarding "Split Specimen Analysis").

The medical review officer will not disclose to any party **any** medical information provided by the individual as part of the testing verification process. There is an exception to this rule where, in the MRO's reasonable medical judgment, the information indicates that continued performance by the individual of his or her safety sensitive function could pose a significant safety risk. Before obtaining medical information from any individual as part of the verification process, the MRO explains to the Driver that any information provided may be disclosed to third parties if continued performance by the Driver of his or her safety-sensitive function could pose a significant safety risk.

**Blind Sampling:** Federal regulations require that for every 100 urine specimens submitted for drug testing, three blind performance specimens must be submitted. Blind testing is a quality control measure designed to assure the accuracy of lab results. To insure that the laboratory cannot tell the blind sample specimen from any other real specimens, MEA will submit the blind sample under an assumed name. For companies with fewer than 2,000 Drivers, all blind samples may be submitted without the presence of illegal drugs. For those companies with greater than 2,000 Drivers, twenty percent of all blind samples must be spiked with illegal drugs. By the County's participation in the MEA testing consortium, the blind sampling requirements will be handled by MEA.

## ALCOHOL TESTING

As noted earlier, alcohol testing is different from drug testing because it involves testing breath with a machine. Thus, no laboratory or urine samples are involved. This section will explain the alcohol testing procedures.

**The Testing Machine/EBT:** The testing apparatus is a breath machine, referred to as an EBT (evidential breath testing device), and the particular make and model used is certified by the National Highway Traffic Safety Administration (NHTSA) and must appear on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices". This list is referred to in the industry as the CPL, and it is somewhat analogous to the drug testing requirement that labs be listed as certified by the DHHS. All MEA machines will meet these requirements.

The requirements for the EBT are somewhat different for initial screening vs. confirmatory testing, but if the machine meets the requirements for confirmatory testing, it can be used for the initial screening as well. For confirmation testing, the EBT must be able to distinguish between alcohol and acetone at concentrations of .02 alcohol concentration (measured in terms grams per 211 liters of air.) Also, the machine must be capable of printing in triplicate or on three consecutive and identical copies: the test result; the EBT's serial number and manufacturer; the time of the test; and a unique identification number produces by the EBT must also be capable of being read before the test is conducted.

For the initial screening test only, it is permissible to use an EBT that is on NHTSA's CPL list but does not meet all the other requirements just discussed. If such a machine is used, the tester must use a highly stylized log book to track the data for each initial screening test. However, in all cases, confirmation testing for alcohol must be conducted on an EBT meeting all the requirements of the preceding paragraph.

The regulations require that the manufacturer of the EBT develop a Quality Assurance Plan of testing and maintenance for the machine and MEA's personnel will follow that plan to assure proper function of the EBTs used in the County's program. MEA will keep the machines

securely stored when not in use. MEA's personnel will conduct testing of calibration, tolerances, and testing intervals, as well as machine inspection and maintenance. MEA is required to keep detailed records of their EBT Quality Assurance Plan.

**The BAT:** The person who conducts the alcohol testing is called a breath alcohol technician or BAT and this person is the functional equivalent of the CSP who collects drug testing specimen. The MEA BATs are trained on the type of EBT to be used and are trained at an approval course meeting NHTSA model course requirements. MEA maintains documentation for the County of the proficiency and training of its BATs, along with other required records of compliance with FHWA regulations.

**Testing Procedures:** The procedures for alcohol testing are similar to drug testing. For example, the BAT must initially confirm the identity of the person to be tested and the BAT must explain the testing procedure to the employee. The BAT is to work with only one employee at a time. The testing is to be conducted at a location and in a manner that ensures aural and visual privacy. A mobile testing unit (i.e., van) may be used but must meet the privacy requirements. The only exception to the privacy requirement arises in the case of accident scene or other emergency testing, and in the event, MEA will assure that Drivers are provided as much privacy as the situation will allow.

**Initial Screening:** After the BAT has identified the Driver and has explained the testing procedure, the next step is to fill out the first part of the Breath Alcohol Test form, which includes the Driver's consent to be tested. (If the Driver refuses to sign, this constitutes a refusal to be tested and is treated as a positive test would be.) After consenting, the Driver watches the BAT open an individually wrapped and sealed mouthpiece, which is then attached to the EBT. The Driver is instructed to blow forcefully into the mouthpiece, which is then attached to the EBT. The Driver is instructed to blow forcefully into the mouthpiece for at least six seconds or until the EBT indicates a valid sampling amount has been obtained.

The EBT will then provide the results of the initial test and the BAT will share these

with the employee. (NOTE: the methods of communicating and documenting these steps will vary depending on whether the machine is fully digital or whether a log book is used.) If the test result is a breath alcohol concentration of less than .02, the test is considered negative and the Driver and BAT complete the remainder of the form, sign it and report the result to the County.

If the result of the initial screening test is .02 or greater, it will be necessary to conduct a confirmation test. This second test will use a fully digital EBT meeting the confirmation testing requirements noted earlier above and may be conducted by the same BAT. If a different BAT will perform the confirmation test, the BAT who did the initial testing must sign off in the appropriate place on the form.

**Confirmation Testing:** Generally, the same BAT will perform the initial and the confirmation test, though this is not required. If a new BAT will perform the confirmation test, the new BAT must re-perform the Driver identification steps and must explain the testing procedures to the Driver. In addition, the new BAT will need to complete section 1 of the test form. In all cases, the confirmation test must be performed within twenty minutes of the completion of the screening test.

There is a waiting period between the initial screening test and the confirmation test of fifteen minutes, counted from the conclusion of the screening test. The BAT will instruct the employee not to eat or drink anything during the waiting period and not to belch, if possible. These restrictions, like the waiting period itself, are for the Driver's benefit by preventing an inflated or otherwise inaccurate alcohol reading. However, the test will be conducted at the end of the waiting period, regardless of whether the Driver follows the forgoing instructions. Any failure by the Driver to follow instructions will be noted by the BAT in the "Remarks" section of the testing form.

The testing procedures themselves for the confirmation test are identical to the initial test in terms of instructions to the Driver, using a new mouth piece and getting a valid specimen. Before administering the test, however, the BAT must conduct an Air Blank test to assure that

the EBT registers 0.00 on the Air Blank (a test of room air). If the first Air Blank registers greater than 0.00, one additional Air Blank may be conducted. If that second Air Blank test is 0.00, the test may proceed. If not, the test must not proceed using the machine. That EBT will not be used in FHWA testing again until it has been checked for calibration and tolerances in accordance with the manufacturer's quality assurance program.

If the EBT confirmation test result is different from the initial result, the confirmation test result controls. As with the initial test, the BAT will show the result of the confirmation test to the employee and will complete the testing form. Both the Driver and the BAT must then sign the testing form. The BAT will then conduct an additional Air Blank test and, if the result is greater than zero, the confirmation test is invalid.

To be considered positive and in absolute violation, a driver's confirmed alcohol level must be .04 or greater. Results between .02 and .04 are not absolute violations but require that the employee be relieved of safety-sensitive duties until the longer of 24 hours or the start of his next shift.

**Reporting Results:** The result of the alcohol test is reported on a triplicate form, the format of which is required by the FHWA regulations.

The County has designated Benji Coats to communicate with MEA's BAT on alcohol testing matters. If test results are initially communicated other than in writing, the BAT and the County's representative must have a system of identification before the information is provided. The initial oral report must be followed by delivery of the County's copy of the testing form and the County is responsible for maintaining this and all other required records in a secure manner.

**Miscellaneous Provisions:** As with drug testing, any suspicious behavior, failure to cooperate, inability to provide a specimen or other behavior which makes completion of an alcohol test impossible shall terminate the test and shall be documented by the BAT. Similarly, if a test is interrupted or events occur which would render the test invalid, the test must be aborted and started over using new materials and new forms.

If a Driver is unable to provide a specimen of air suitable for testing, the County shall be so informed and the County will select a physician to evaluate whether the failure to provide enough air is medically explainable. This is the same requirement as the "shy-bladder" evaluation performed by the MRO under the drug testing regulations and, as in drug testing, the physician's report to the County must be in writing. If there is no valid medical explanation for the failure to provide the specimen, it is treated as a refusal to co-operate and thus a positive test. (NOTE: This medical evaluation will not be conducted if the test is a pre-employment test.)

A breath alcohol test is considered invalid under the following circumstances: failure to observe the 15 minute waiting period; failure of EBT to pass calibration and tolerance tests at the next subsequent check; failure of the BAT to conduct Air Blank testing; failure of the BAT to sign the form or to note in the "remarks" section that the employee failed or refused to sign the form; EBT fails to print a confirmation test result; disparity between the Driver identification number or alcohol concentration as between the printed result from and the digital reading on the machine.



## APPENDIX "B"

### SUMMARY OF POST-ACCIDENT REQUIREMENTS FOR TESTING

If a Driver is involved in an accident while driving and on duty, post accident drug and alcohol test is required if: the accident involves a fatality or the Driver receives a citation for a moving violation. To assist Drivers in complying with this requirement, County Supervisors will discuss with you procedures for post accident testing. They are summarized as follows:

1. If you are involved in an accident, you should immediately contact the County Supervisor.
2. If you cannot make this contact, ask law enforcement officials to make the contact for you.
3. If you receive a citation or if the accident involves a fatality (or potential fatality), **you must be** alcohol and drug tested.
4. **If** you are unable to reach your supervisors, you should request the law enforcement personnel to conduct an alcohol test of you. You should also contact the nearest medical facility to request a urine screen for drugs. (The County will reimburse you for any expense).
5. If you need medical assistance, that assistance is not to be delayed to conduct testing. However, if you are unable to do so, inform the medical personnel of the need for the testing for drugs and alcohol.
6. If you are unable, due to injuries, to complete any of the steps in 1-5 above, your signed consent form on file allows the County to order the necessary tests for you.

## APPENDIX "C"

### SUMMARY OF INFORMATION ON EFFECTS, MANIFESTATIONS AND METHODS OF INTERVENTION IN ALCOHOL AND DRUG USE/ABUSE

A. Video Tape

"Driver Training for Drugs and Alcohol" (60 Minutes)

1. Signs and Symptoms of Alcohol and Drug Abuse
2. Interview with Recovering Alcoholic
3. Interview with Substance Abuse Professional
4. Explanation of Alcohol and Drug Testing Procedures
5. Explanation of On-Duty Time

B. Hand-Out

What You Can Do About Drug Use In America

1. What Are Drugs?
  - a. What Kinds of Drugs are There?
  - b. How and Why Does Drug Use Start?
  - c. What are the Physical and Psychological Effects of Alcohol and Other Drugs?
  - d. The Effects of Alcohol
2. How Can We Begin to Deal with the Problem of Drug Abuse?
  - a. How Can I Tell if Someone I know is Using Drugs?
  - b. How Can I Come to Grips with my Problem?
  - c. How Can I Help a Family Member or a Friend?
  - d. Four Basic Stages of Alcohol and Other Drug Use
3. How Can I Keep My Family Free from Problems Caused by Alcohol and Other Drugs?
  - a. What Early Education Information Do I Need?
  - b. How Can I Set an Example?
  - c. How Can I Help My Younger Children to Say "No"?
4. Where Can I Go for Help?
  - > Private or State Organizations (e.g. SAPs)

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