

**RESOLUTION NO. 20R-10**

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF BIGHORN-DESERT VIEW WATER AGENCY  
ADOPTING A DRUG AND ALCOHOL TESTING PROGRAM  
FOR SAFETY-SENSITIVE EMPLOYEES  
IN ACCORDANCE WITH DEPARTMENT OF TRANSPORTATION AND FEDERAL  
HIGHWAY ADMINISTRATION REGULATIONS**

**WHEREAS**, by Resolution No. 18R-14, the Board of Directors of the Bighorn-Desert View Water Agency ("Agency") adopted an updated Drug and Alcohol Testing Program mandating that the Agency test certain safety-sensitive employees who must possess a commercial driver's license as a requirement of their job classification; and

**WHEREAS**, the Program is intended to provide the policies and procedures by which the Program will be administered in accordance with specific Department of Transportation and Federal Highways Administration published regulations; and

**WHEREAS**, the Program is intended to deter safety-sensitive employees from using illegal drugs, controlled substances or the misuse of alcohol in a variety of circumstances, subject to a complex scheme of procedural safeguards including random drug and alcohol testing selection; and

**WHEREAS**, effective January 6, 2020 the Department of Transportation issued guidance requiring such policies to require any commercial motor vehicle driver who is subject to the Federal Motor Carrier Safety Administration's drug and alcohol regulations in 49CFR part 382 must also comply with the CDL Driver Drug & Alcohol Clearinghouse regulation in Part 82, Subpart G; and

**WHEREAS**, an amended Drug and Alcohol Testing Program has been prepared and reviewed by the Board of Directors of the Agency.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Agency as follows:

1. That the Drug and Alcohol Testing Program shall apply to all safety-sensitive employees as defined by the Department of Transportation as follows:
  - a. Those employees that operate vehicles that require drivers to hold commercial driver's licenses or who drive a vehicle of any size used to transport those hazardous materials found in the Hazardous Materials Transportation Act and which require the vehicle to be placarded under the Hazardous Materials Regulations
  - b. Those employees that maintain or service commercial vehicles or equipment.

2. That all supervisors and managers will receive required training on controlled substance use and reasonable suspicion; and
3. That Resolution 18R-14 is hereby rescinded and of no further force and effect; and
4. That the President and Secretary of the Board of Directors, the General Manager, and the Agency staff are hereby authorized and directed to take such further steps as are reasonable necessary and appropriate to implement this Resolution.

**PASSED, APPROVED AND ADOPTED** by the Board of Directors to Bighorn-Desert View Water Agency this 28<sup>th</sup> day of April, 2020.

BIGHORN-DESERT VIEW WATER AGENCY

BY:

  
Judy Cori-Lorono, Board President

ATTEST:

By   
J. Larry Coulombe, Board Secretary



Agency Seal

# BIGHORN-DESERT VIEW WATER AGENCY



## DRUG AND ALCOHOL TESTING PROGRAM

Resolution No. 20R-10  
Adopted April 28, 2020

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## EXECUTIVE SUMMARY

The U. S. Department of Transportation ("DOT") and the Federal Highways Administration (FMCSA) have published regulations (49 CFR 40 and 382) mandating that the Agency test certain safety-sensitive employees who must possess a commercial driver's license as a requirement of their job classification for the illegal use of drugs and controlled substances, and the misuse of alcohol in a variety of circumstances, subject to a complex scheme of procedural safeguards.

To ensure compliance with these Federal mandates, the Bighorn-Desert View Water Agency Drug and Alcohol Program ("Policy") has been created to incorporate specific DOT Policy language and testing methodologies. This Policy is to be interpreted consisted with all applicable federal regulations and law.

## **Summary of DOT Requirements**

1. The DOT has determined that "safety sensitive" functions are performed by those who:
  - a. Operate vehicles that require drivers to hold commercial driver's licenses or who drive a vehicle of any size used to transport those hazardous materials found in the Hazardous Materials Transportation Act and which require the vehicle to be placarded under the Hazardous Materials Regulations
  - b. Maintain or service commercial vehicles or equipment.

These categories include contractors who are "Standing in the Shoes" of Agency employees.

2. The DOT mandates require breath testing for alcohol.

In addition, the Agency's tolerance for alcohol is defined as 0.040 to comply with DOT's decision that a 0.040 test result is equivalent to a positive test level which unquestionably denotes the presence of an unacceptable level of alcohol in the system. The six (6) types of testing which are required are:

- Pre-Employment
- Reasonable Suspicion
- Post-Accident/Incident
- Random
- Return to Duty

- Follow-up

Random alcohol testing using an approved Evidential Breath Testing device (EBT) will be utilized.

The Policy clearly identifies the time periods during which all employees must be in compliance with the consumption portion of the alcohol rule. An employee must not consume alcohol four (4) hours prior to performing their job, anytime he/she is "on-call", and up to eight (8) hours following an accident or until the employee undergoes a post-accident test, whichever occurs first. Use and ingestion of illegal (including, but not limited to, marijuana which remains illegal under federal law) drugs are prohibited at all times.

3. Supervisors and Managers will receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required. All trained supervisors will be held responsible for making the appropriate dispositions related to situations that may warrant a drug/alcohol screen.
4. The Policy describes the kinds of behavior that constitute a refusal which include: refusal to take the test, inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation, tampering with or attempting to adulterate the specimen or collection procedure, not reporting to the collection site within the allotted time frame, or leaving the scene of an accident without a valid reason before the tests have been conducted.
5. Pre-employment testing applies to candidates for employment at the Agency who are seeking a safety-sensitive position and all candidates transferring into safety-sensitive positions.
6. The DOT requires that the Agency utilize a "Reasonable Suspicion" standard. Examples of "Reasonable Suspicion" include, but are not limited to, the following:
  - Physical signs and symptoms consistent with prohibited substance use, or misuse of alcohol, e.g. odor of alcohol, slurred speech, or lack of coordination.

- Evidence of the manufacture, distribution, dispensing, possession or use of controlled substances, drugs, alcohol, or other prohibited substances.
- Occurrence of a serious or potentially serious industrial accident that may have been caused by the employee's use of alcohol or drugs.
- Fights (defined as physical contact), assaults, and flagrant disregard, or violations of, established safety, security, or other operating procedures.

## 7. Post-Accident

As soon as practicable following an occurrence involving the vehicle, the Agency will test for alcohol and controlled substances for each surviving driver if the accident occurred while the driver was performing safety-sensitive functions and involved the loss of human life. The Agency will also test for alcohol for each surviving driver who receives a citation within eight hours of the occurrence under State or local law for a moving traffic violation arising from the accident, and for controlled substances for each surviving driver who receives a citation within 32 hours of the occurrence under State or local law for a moving traffic violation, if the accident involved: (a) bodily injury to any person who immediately receives medical treatment away from the scene of the accident; or (b) disabling vehicle damage requiring a motor vehicle to be transported away from the scene.

8. In accordance with DOT regulations, all safety-sensitive employees who test positive for drugs or for alcohol at 0.040 or above and who, under this Policy, are allowed to return to work must pass a Return to Duty test prior to being released for duty by a Substance Abuse Professional (SAP).

This drug/alcohol screen shall be ordered when:

- The employee has previously failed a post-accident/incident, reasonable suspicion, return to work or random screen.
- The employee is returning from a drug and/or alcohol rehabilitation program arranged by or made known to the Agency.
- The employee has signed a treatment plan, work resumption or return to work agreement which requires the screen.

9. Where Agency Policy exceeds the requirements of the Federal regulations, these provisions are identified.





## I. PURPOSE

The Agency performs a vital service for the public. To ensure that this service is delivered safely, efficiently and effectively, each Agency employee has the responsibility to perform his/her duties in a safe, conscientious, and courteous manner. This Policy has been established to comply with the Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) drug/alcohol testing regulations (49 CFR Parts 382 and 40). It further establishes guidelines to maintain a drug-free and alcohol-free workplace and to reduce the probability of accidents or incidents related to the use and/or abuse of alcohol and other drugs by employees.

This Policy outlines four principles as a means to achieve the Agency's goal of providing a workplace free from the effects of drug and alcohol use and/or abuse for its employees. The first principle emphasizes deterrence from the use of drugs and alcohol in or affecting the workplace. The Agency will make education and training available for all employees regarding the effects of substance abuse on individuals and on the workplace. Supervisors and managers will receive specialized training in detection, early intervention, and enforcement. Employees who test positive for any reason will receive an evaluation by a Substance Abuse Professional (SAP) before returning to work.

The second principle is treatment and rehabilitation. The Agency maintains an Employee Counseling Service (ECS) to assist employees with personal problems surrounding the misuse of drugs and alcohol. Your supervisor will direct you to the proper agency. The Agency supports rehabilitation before an employee's job is in jeopardy. Although employees are encouraged to receive help for drug and alcohol problems, participation at ECS will not excuse an employee's failure to comply with Agency rules and regulation nor will it preclude discipline for rule of Policy violations.

The third principle is detection. Toward this end, the Agency employs drug and/or alcohol tests in the following circumstances: pre-employment, reasonable suspicion, post accident/incident, return to work, random and follow-up. The above drug and/or alcohol tests will apply to those employees who are required to possess a commercial driver's license by their job classification or are otherwise covered by the federal regulations noted above.

The fourth principle is enforcement, which is essential if deterrence, rehabilitation and detection are to be successful. All employees must be "fit for duty" as defined within this Policy. **Accordingly, the failure to properly report the use of medically authorized drugs, the use, sale or possession of illegal drugs, any use of intoxicants resulting in**

**unfitness for duty, as well as the use or possession of intoxicants on Agency property, while using Agency equipment or while on Agency business, is prohibited and will result in disciplinary action up to and including discharge.** To assure that safety is maximized, any employee who tests positive for drugs and/or alcohol after an accident/incident or in "reasonable suspicion" situation may be discharged from the Agency.

## **II. INTRODUCTION**

The goal of the Agency, its management, and its employees is to establish a drug and alcohol-free work environment and to remain free from the effects of drugs and alcohol in order to guarantee the health and safety of employees and the public. Attachment "A" provides information about the effects of alcohol misuse and the signs and symptoms of an alcohol problem; and Attachment "B" lists the job classifications considered to be safety-sensitive. This Policy incorporates the DOT drug/alcohol testing requirements for those safety-sensitive employees of the Agency.

### **A. Applicability**

This Policy applies to all regular, part-time, temporary, and contractual employees, as well as contractors when they are on Agency property or when performing Agency business who are employees covered under the DOT federal regulations. Visitors, vendors and contractors are governed by this Policy while on the Agency's premises and will not be permitted to conduct business or remain on Agency property if found to be in violation of this Policy.

### **B. Employee and Management Responsibilities**

All employees are required to refrain from using drugs and alcohol as described in the fitness for duty section of this Policy (III.A.1.).

Agency employees who manage private contracts for work conducted on Agency property are responsible for ensuring contractor compliance with this Policy.

Employees at all levels of the organization are responsible for ensuring adherence to this Policy. Supervisors will be held strictly accountable for both the application of the Policy and the consistency of its enforcement. The General Manager [(760) 364-2315] is the individual acting as the implementation coordinator and is available to answer questions relevant to the Policy and associated procedures.

### **C. Confidentiality**

Confidentiality is maintained throughout the drug/alcohol screening process and all test results will be forwarded to the Medical Review Officer for review. Individual test results may not be released to any other party, or parties, absent a specific written authorization by the tested person to release the results to others, except as follows:

- The employee authorized the transmittal of the information.
- The employee has signed a treatment plan with a SAP or a back to work or work resumption agreement with the Agency in which the results of the screen must be known for further action concerning the employee.
- The employee has been sent for testing under any of the six (6) circumstances discussed in Section IV, and the Medical Review Officer (or designee) must inform the appropriate Designated Employer Representative (DER).
- The employee makes a claim against the Agency which involves the drug and/or alcohol screen and/or its result.
- There is a disciplinary action against the employee that involves the drug and/or alcohol screen and/or result.

SAP staff will make every effort to carry out all actions relative to this Policy in a manner which respects the dignity and confidentiality of those involved. SAP records are regarded as confidential medical records and are not available to anyone outside of SAP staff without a signed release of information.

Only those Agency personnel who must be involved in a case will be given information regarding an employee's positive test result or information regarding the employee's participation or lack thereof in an SAP treatment program. Every attempt will be made to advise the employee in advance.

In cases where an employee has chosen to make his/her participation at SAP an issue in any claim against the Agency, the employee understands that he/she waives his/her right to confidentiality. In such cases, the Agency assumes the right to thoroughly explore and evaluate the employee's participation in SAP.

### **III. IMPLEMENTATION GUIDELINES FOR PROMOTING A DRUG AND ALCOHOL FREE WORKPLACE**

## A. Deterrence

### a. Fitness for Duty

The Agency has determined that an employee is fit for duty when he/she is unequivocally able to perform his/her job duties, including when he/she is ready for work or working without the presence of any alcohol or the presence of any specified drugs or their metabolites as prescribed by this Drug and Alcohol Policy. As required by DOT regulation, safety-sensitive employees are prohibited from consuming alcohol four (4) hours prior to performing a safety-sensitive function.

An employee is "on-duty" or "subject to duty" within the meaning of this provision:

- On his/her regularly scheduled days.
- From the time he/she arrives on the property until the time he/she completes his/her work assignments and leaves the property.
- When reporting to the Agency designated site for medical evaluation.
- When the employee has volunteered or has been assigned extra work on his/her day off, vacation, etc.
- While on an "on-call" status or prior to the start of duty, when told in advance that he or she is expected to be on duty at some point in the future.
- When involved with Agency business while not on Agency property.
- Alcohol consumption is prohibited four (4) hours prior to reporting for work.

Reporting the Use of Prescription or "Over-the-Counter" Medication is required. (However, the employee is not required to disclose the condition for which he is taking the medication.)

*The Agency, under its own authority, requires that safety-sensitive employees report their use of prescription or "over-the-counter" medication which contains alcohol or other substances that may impact their ability to perform safety-sensitive work to*

*their supervisor.* DER will consult with a physician or nurse who will make the determination as to whether there is a possibility that the employee's performance may be affected or compromised by the use of such medication or that the safety of the employee, his/her coworkers or the public is, or could be, in jeopardy. If it is concluded that there is such a possibility, the employee will be considered unfit for duty and the employee's supervisor will advise the employee that he/she is temporarily medically disqualified. In certain circumstances, the failure to report will result in disciplinary action.

The employee will remain temporarily disqualified until cleared to return to work by a physician. Safety-sensitive employees who fail to report their use of prescription drugs and "over-the-counter" medication in accordance with this section, are subject to progressive discipline, up to and including discharge. Therefore, these employees are required to inform their physicians and/or pharmacists of their employment requirements regarding fitness for duty prior to obtaining medication.

**b. Education and Training**

Supervisors and Managers will receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required. All trained supervisors will be held responsible for making the appropriate dispositions related to situations that may warrant a drug/alcohol screen.

**B. Employee Counseling Service (ECS) Responsibilities**

Any employee that has a confirmed positive drug or alcohol test or refuses to take a drug/alcohol test must be removed from safety sensitive duties immediately. The individual must be evaluated by a SAP and informed of available educational and rehabilitation programs that can assist them to resolve problems with substance abuse. The SAP evaluation and/or information on rehabilitation does not imply that any disciplinary outcome will necessarily be altered by providing such services.

ECS will assist employees with alcohol and drug problems, and related concerns, through:

- Performing a SAP evaluation.
- Consultation with supervisors and/or other Agency officials.
- Evaluation and referral.
- Short-term individual and group counseling.
- Individual case management.
- Crisis intervention (twenty-four (24) hour crisis line).
- Specialized training for supervisory staff and individuals.
- Employee educational programs.

#### 1. Substance Abuse Professional (SAP) Evaluation

The DOT requires that covered employees receive evaluation by a Substance Abuse Professional upon a positive test for drugs or alcohol regardless of their disciplinary status. This evaluation will be conducted according to the standards outlined in Section VI of this Policy.

#### 2. Referral to ECS

There are two ways to begin rehabilitation through ECS:

- Voluntary self-referral
- Managerial referral

Voluntary self-referral is preferred by the Agency as a means to resolve drug and/or alcohol problems. Any employee who self identifies prior to any incident or discipline can obtain confidential assistance for his/her problem. An employee is considered a voluntary self-referral if he/she has not incurred formal discipline (within a two (2) year period) related to drugs or alcohol. Voluntary participation at ECS will not adversely impact an individual's employment or promotional opportunities at the Agency. However, employees who do not make a conscientious attempt to overcome their drug and/or alcohol problems may experience performance problems as a result and, in that case, will be subject to

disciplinary action based on poor or improper job performance or as a result of a positive drug and/or alcohol screen, and will no longer be considered a voluntary self-referral.

An employee can be referred to ECS by outside officials (probation officers, court programs) and still be considered a self-referral if he/she has not been formally disciplined for drugs or alcohol violations by the Agency within the last two (2) years.

The second avenue for referral is through management. Supervisors are strongly encouraged to refer to ECS for an evaluation any employee who demonstrates job performance problems such as excessive absences, tardiness and overall poor work performance.

The referring supervisor will be informed of the individual's desire to participate. However, employees are not required to participate in a treatment program established by ECS except as outlined below.

Under the following circumstances an employee will be required to seek treatment through ECS:

a. Referral to ECS as part of a Last Chance Agreement.

Employees in this category will be ordered to ECS by a supervisor or manager as part of the discipline. In most situations the employee will not continue to work in his/her position while participating in a treatment plan established by ECS, due to the safety sensitive nature of their job.

Employees who refuse to participate when referred under this circumstance will be subject to disciplinary action which would be discharge. Supervisors will be notified if employees in this category fail to participate.

Any safety-sensitive employee who is evaluated by ECS and is determined to be unfit for duty due to a substance abuse problem and who then opts not to participate in a treatment program will be advised by ECS that he/she cannot return to his/her position until cleared by SAP. Clearance by SAP will involve a drug/alcohol screen. If an employee fails to begin participation at ECS within seven (7) working days or refuses the drug/alcohol clearance screen, he/she will be referred to the appropriate supervisor for discipline which will be a recommendation for discharge.

b. Referral after a positive drug/alcohol screen.

Employees will be referred to ECS by their Supervisor after a positive drug/alcohol screen. In these situations, such employees must be evaluated by SAP, within seven (7) working days, to determine whether the employee is in need of assistance in resolving problems associated with the prohibited drug/alcohol use. In addition, employees must participate fully in a treatment program established by SAP during the entire time of their suspension. In some cases employees may be held out of work up to an additional six months if they require additional treatment. (See section V.A.II of this Policy).

Employees who test positive on reasonable suspicion, post-accident/incident or return to work testing will be provided an evaluation by a SAP and advised that they may participate at ECS until they are either returned to work or discharged from the Agency. Participation at ECS in this category does not in any way guarantee that they will be reinstated.

- c. Referral after an off duty driving under the influence offense.

*Under its own authority, the Agency will require employees whose positions require a valid commercial driver's license, who lose their license for driving a non-Agency vehicle off duty while under the influence, at the time the license is suspended to contact ECS for evaluation and treatment planning. Such employee will not be returned to operating work until their license is restored and until they are cleared for duty by ECS regardless of whether any court ordered treatment has been completed.*

*Based on the reason for referral and the assessment of ECS, employees referred to ECS and determined to have a substance abuse problem may be removed from their position and suspended or assigned to alternative duty, subject to the availability of such work, and the need to accommodate other disqualified employees.*

#### **IV. GENERAL POLICY PROVISIONS FOR ALCOHOL AND DRUG TESTING**

##### **A. Detection**

##### **1. Drug and Alcohol Screening**



The Agency, in order to promote and maintain a drug and alcohol free environment, will utilize a program of drug and/or alcohol screening which will be mandatory under the following conditions.

a) Pre-employment

The DOT requires that candidates for safety-sensitive positions as well as any employee who is transferring into a safety-sensitive position receive a drug screen before assignment.

Prior to the test, the employee must sign a release authorizing the procedure. Candidates for employment will be notified of this requirement during the pre-placement process and the test will be given as part of the pre-employment process.

Agency employees who are permanently transferring into a safety-sensitive position will be given a drug test. A urine test will screen for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and/or any additional substances required by DOT in the future.

b) Random

Only those employees who perform or whose job includes the performance of safety-sensitive functions as defined by the DOT regulations will be subject to drug screening on an unannounced and random basis. Each employee in the random pool has an equal chance of being selected for testing and shall remain in the pool even after being selected for testing and shall remain in the pool even after being tested. Random testing will be administered at random times during the week, day or shift to avoid predictability. A urine test will be used to screen for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and/or any other drugs required by DOT in the future. An Evidential Breath Testing Device (EBT) will be used to screen for the presence of alcohol. Random selection shall be done by an outside contracting organization, with no intervention or involvement with the Agency in the random testing selection process.

(See attachment B for a listing of safety-sensitive job classifications designated for random testing).

c) Reasonable Suspicion

An employee who reports to work in an unfit condition or is found to be unfit while on duty and/or who exhibits behavior which provides one (1) supervisor with reasonable suspicion that the employee is unfit for duty

will be required to submit to a drug and alcohol screen. The employee will be given a urine test for marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, and/or any other drugs required by DOT in the future.

Examples of reasonable suspicion include, but are not limited to, the following:

- Physical signs and symptoms consistent with prohibited substance use, or misuse of alcohol, e.g. odor of alcohol, slurred speech or lack of coordination, staggering, erratic behavior, dilated pupils, fast speech, aggressiveness, and any other indications.
- Occurrence of a serious or potentially serious industrial accident that appears to have been caused by the employee's use of alcohol or drugs.
- Fights (defined as physical contact), assaults, and flagrant disregard, or violations of, established safety, security or other operating procedures.

d) Post accident/incident.

The DOT requires that a post-accident test be conducted in the following circumstances involving safety-sensitive employees and Agency vehicles.

- In any instance where there is loss of a human life.
- Anytime an employee must be transported to a medical treatment facility, and the employee is cited under state or local law for a moving violation arising from the accident.
- The vehicle incurs disabling damage that requires towing from the scene, and the employee is cited under state or local law for a moving traffic violation arising from the accident.

e) Return to Duty.

The drug and alcohol screen will be identical to that utilized in IV.A.1.c., Reasonable Suspicion

f) Follow-up

As required by DOT, employees who are eligible for a return to duty agreement shall be subject to unannounced follow-up periodic testing for at least 12 but not more than 60 months. The frequency and duration of the follow-up testing will be recommended by the SAP. There will be a minimum of six (6) tests required during the first twelve (12) months. Follow-up testing is separate from and in addition to the regular random testing program. Employees subject to follow-up testing must also remain in the standard random pool and must be tested whenever their names come up for random testing, even if this means being tested twice in the same day, week or month.

The drug and alcohol screen will be identical to that utilized in IV.A.1.b., Random.

**B. Confirmation of a Positive Screen**

The Agency Medical Review Officer will review the results of the drug test from the laboratory, verify the laboratory report and determine if the applicant/employee received a positive or negative result from the drug test.

If the applicant/employee receives a positive test result, that individual will be called by the Medical Review Officer who will review the individual's medical history, including any medical records and biomedical information provided. During the interview, the individual will be afforded the opportunity to discuss the test results and to offer any additional or clarifying information which may explain the positive result.

If there is some new information which may affect the finding, the Medical Review Officer may request the laboratory to perform additional testing on the original specimen in order to further clarify the results. Following these steps, a final determination will be made that the test is either positive or negative and the employee will be so advised.

The Medical Review Officer will not convey test results to the applicant's/employee's designated representative or any Agency official until the Medical Review Officer has made a final decision that the test was positive or negative. If the applicant/employee fails to contact the Medical

Review Officer within 72 hours, the test will be considered positive and appropriate action will be taken.

### 1. Request for Retest

If an employee has taken a urine test for drugs and the results are positive, the employee may request a retest of the original split sample.

As outlined by DOT, the retest will be conducted at the Gas Chromatography/Mass Spectrometry level only.

To initiate a retest, the employee must contact the Agency's designated Medical Review Officer within three (3) days of the date upon which the employee was notified that the initial test was positive. If, after the meeting, the employee wishes to proceed with the retest procedures, the employee must send a written request, a certified check or money order for the cost of the retest, along with a completed form detailing the name and address of the Department of Health and Human Services (DHHS) certified lab where the employee wishes the specimen to be retested to the Agency designated Medical Review Officer. The written request, certified check or money order, and the form must be postmarked within five (5) calendar days from the date the employee met with the Agency designated Medical Official.

Upon receipt of the results from a DHHS certified laboratory, the employee will be contacted by the DER of the results.

During the time required for the retest, the employee will continue in the same status he/she had prior to the request. In the event that the second test returns a negative result, the employee will be compensated for any time or benefits lost and the cost of the retest.

### 2. Sample Deterioration

As some samples may deteriorate during storage, detected levels of the drug in the retest may record below the detection limits of the first test.

As long as the results of the second test are equal to or greater than the established sensitivity of the confirmatory test, the second test shall be confirmed and reports as positive results.

### 3. Observed Drug Tests

There are certain situations in which an employee or applicant will be required to submit to an observed urine screen as set forth in federal regulations.

## **V. ENFORCEMENT OF POLICY THROUGH DISCIPLINE**

### **A. Pre-Employment**

Any applicant who tests positive on a pre-placement drug/alcohol screen will not be hired by the Agency. If, after a twenty-four month period, the individual wishes to re-apply to the Agency he/she may do so only if he/she can provide proof that he/she has received an evaluation by a SAP and received the appropriate assistance.

### **B. Random Testing**

Any employee who tests positive for drugs and/or alcohol pursuant to a random screen shall be discharged if any of the following conditions apply:

#### **1. Second positive test**

If an employee has tested positive for drugs and/or alcohol on a drug and/or alcohol test conducted for any reason within the preceding twenty-four months, the employee shall be discharged for the second positive screen.

#### **2. Poor disciplinary record**

Any employee who tests positive for drugs and/or alcohol pursuant to a random screen and who has had prior major discipline under the Agency's discipline procedure shall be discharged.

Employees who test positive for drugs and/or alcohol pursuant to a random screen, and who do not fall under either of the conditions listed above, shall be subject to disciplinary action as follows:

- When an employee tests positive for drugs and/or alcohol pursuant to a random drug and/or alcohol screen, the employee will receive a minimum of fifteen (15) working days suspended without pay. The employee will be required to report to ECS for a SAP evaluation and follow a recommended treatment plan.
- The employee must contact ECS, participate in a SAP evaluation and sign a treatment plan within seven (7) working days from the date of his/her suspension. Failure to contact ECS and sign a treatment plan within seven (7) working days will result in discharge.

If, after the SAP evaluation and signing a treatment plan, an employee fails to fully participate in the recommended treatment plan, he/she will be provided written notification of failure to participate. If non-participation continues, a second written notification will be sent to the employee and his/her supervisor, which will result in discharge.

- While participating at ECS, the employee will be required to submit to a minimum of two (2) unannounced drug and/or alcohol screens during the time suspended. If an employee tests positive on any one screen during the time out suspended, he/she will be discharged.
- Once an employee has served at least ten (10) working days of his/her suspension, ECS shall evaluate the employee's readiness to return to work.
- If the employee has fully participated in his/her treatment program, a Return to Work Agreement will be executed with the Agency Supervisor who will place him/her at the final step of progressive discipline and will require a return-to-work drug and alcohol screen.

If the results of the screen are negative, the employee will be eligible to return to work. The Return to Work Agreement will require that the employee continue to participate in a treatment program outlined by ECS for an additional minimum two (2) year period.

The voluntary selection of work or working of overtime which interferes with the employee's ability to comply with the treatment plan may result in an ECS determination that the employee is not in compliance with the required treatment plan and, therefore, in violation of the Return to Work Agreement. DOT regulations require that the SAP recommend both the number of required follow-up tests per year and the length of the follow-up testing contract. This can be up to 60 months with a minimum of six (6) tests in the first twelve (12) months.

- If at the end of his/her suspension the employee is not fit for duty either by self-report or ECS assessment, the employee may have his/her time-out-suspended without pay extended for a period of time not to exceed an additional six (6) months and will be required to continue in a treatment program

monitored by ECS. At the end of this period, failure to qualify to return to duty will result in discharge.

- Employees are required to pay for any treatment recommended by the SAP that is not covered by his/her health insurance plan.

### **C. Reasonable Suspicion**

Any employee who tests positive for drugs and/or alcohol pursuant to a reasonable suspicion screen will be discharged. As required by DOT, the reasonable suspicion determination may be made by one (1) appropriately trained Agency supervisor.

### **D. Post-Accident/Incident**

Any employee involved in an accident who tests positive for drugs and/or alcohol will be discharged, regardless of the ultimate preventability determination or the extent of any damage or personal injury. See Section IV.A.1.c. and d. for accidents which require drug and/or alcohol testing.

### **E. Return to Duty**

Any employee who is covered by this provision and who tests positive for drugs and/or alcohol pursuant to a return to duty screen will be disciplined.:

Employees who test positive pursuant to a signed Last Chance Agreement will be discharged.

### **F. Follow-up**

Any employee who tests positive for drugs and/or alcohol pursuant to a follow-up screen will be discharged.

### **G. During Trial Period**

Any employee during the ninety-day (90) Training Period who test positive for drugs and/or alcohol during his/her training period will be discharged. This includes temporary employees who are recommended for regular status.

### **H. Refusal to Take Test**

Any employee who refuses to submit to any drug and/or alcohol test, either by word or action, will be discharged. As required by DOT, this will be reported as a refusal to test. This will include any employee who fails to provide a urine sample within three (3) hours or an adequate amount of breath for an alcohol test.

However, employees who have difficulty providing a sample will be given up to 40 oz. of liquids and an ample opportunity to produce a sample. This time period should not exceed three (3) hours from the time in which the employee attempted to provide a specimen. Employees who notify their supervisor that they are ill when they have been informed that they are required to take a drug and/or alcohol test will be given prompt medical attention, which must also include a drug and/or alcohol test.

#### **I. Test Tampering and/or Non-Compliance with Testing Procedure**

In situations where it has been determined that an employee has tampered with his/her urine sample or an employee fails, after reasonable opportunity, to complete any step in the drug testing process, he/she will be discharged.

#### **J. Unsatisfactory Mandated Employee Counseling Service (ECS) Participation**

An employee ordered to ECS under any provision of this Policy who fails to participate in the SAP evaluation or fully participate in the recommended treatment program, fails to comply with the terms of his/her ECS plan, or refuses to take a drug and/or alcohol screen when ordered to do so shall be discharged. (See Section III.B. for additional information regarding ECS treatment program.)

### **VI. METHODOLOGY**

The Agency will have the responsibility to coordinate all testing efforts including contracts with any off-site collection facility and will ensure that all testing is performed in accordance with Department of Transportation (DOT) rules on drug and alcohol testing, as well as requirements set by Department of Health and Human Services (DHHS) regarding collections, chain of custody, and laboratory procedures.

#### **A. Drug Testing Procedures**

The Agency will contract for laboratory services with a laboratory certified by the DHHS. These laboratories have been rigorously inspected and tested and meet the highest standards for analytical competence. The laboratory will utilize a two-tier testing methodology,



If a specimen is positive on the initial immunoassay test, a confirmatory test will be conducted. The only confirmatory test permitted is the GC/MS – Gas Chromatography/Mass Spectrometry. As required by DOT, the urine specimen must be split and poured into two specimen bottles, this provides the employee with the option of having an analysis of the split sample performed at a separate DHHS laboratory, at the employees expense, should the primary specimen test result be verified positive.

# 1. Drug Categories and Test Thresholds

Pursuant to the current Department of Transportation regulations, the drugs to be tested for, and the threshold levels of each test which the Agency is required to accept are:

Cutoff Concentrations for Drug Tests

| Initial test analyte                      | Initial test cutoff    | Confirmatory test analyte | Confirmatory test cutoff concentration |
|---|------------------------|---------------------------|--|
| Marijuana metabolites (THCA) <sup>2</sup> | 50 ng/mL <sup>1</sup>  | THCA                      | 15 ng/mL.                              |
| Cocaine metabolite (Benzoylecgonine)      | 150 ng/mL <sup>1</sup> | Benzoylecgonine           | 100 ng/mL.                             |
| Codeine/<br>Morphine                      | 2000 ng/mL             | Codeine<br>Morphine       | 2000 ng/mL.<br>2000 ng/mL.             |

|                                 |           |                                |                          |
|---------------------------------|-----------|--------------------------------|--------------------------|
| Hydrocodone/<br>Hydromorphone   | 300 ng/mL | Hydrocodone<br>Hydromorphone   | 100 ng/mL.<br>100 ng/mL. |
| Oxycodone/<br>Oxymorphone       | 100 ng/mL | Oxycodone<br>Oxymorphone       | 100 ng/mL.<br>100 ng/mL. |
| 6-Acetylmorphine                | 10 ng/mL  | 6-Acetylmorphine               | 10 ng/mL.                |
| Phencyclidine                   | 25 ng/mL  | Phencyclidine                  | 25 ng/mL.                |
| Amphetamine/<br>Methamphetamine | 500 ng/mL | Amphetamine<br>Methamphetamine | 250 ng/mL.<br>250 ng/mL. |
| MDMA/MDA                        | 500 ng/mL | MDMA<br>MDA                    | 250 ng/mL.<br>250 ng/mL. |

2. (Any changes to the regulations regarding the above thresholds shall be incorporated into the Policy and supersede the table above.) Role of the Substance Abuse Professional

The DOT regulation requires that any individual who has a verified positive test result must be immediately removed from his/her position. In addition, he/she must be advised of the resources available to evaluate and resolve problems associated with drug abuse, including the names, addresses, telephone numbers of substance abuse professionals. The employee must be evaluated by a Substance Abuse Professional (SAP) who shall determine what assistance the employee needs in resolving the problems associated with prohibited drug use

A SAP can be (1) licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional, with knowledge of and clinical experience in diagnosis and treatment of drug and alcohol related disorders; of (2) additions counselor certified by the National Association of Alcoholism Drug Abuse Counselors Certification Commission, (3) Must have SAP certification, which includes Federal DOT Rules and Regulations.

The role of the Substance Abuse Professional (SAP) is to:

- Evaluate whether a safety-sensitive employee who has refused to submit to a drug test or who has a verified drug test result is in need of assistance in resolving problems associated with prohibited drug use.
- Evaluate whether a safety-sensitive employee who has a positive drug test, and is eligible to return to work, has complied with the SAP's recommendations.
- Recommend the number of months of returning to safety-sensitive employee will be subject to follow-up testing after returning to duty (after a minimum six (6) tests required during the first twelve (12) months.

## **B. Alcohol Testing Procedures**

The DOT regulation requires breath testing be collected through the use of Evidential Breath Testing Device (EBT) that is approved by the National Highway Traffic Safety Administration (NHTSA). The test must be performed by a Breath Alcohol Technician (BAT).

The DOT regulation prohibits any employee with an alcohol concentration of 0.040 or greater from performing any safety-sensitive duties until he/she has been evaluated by a Substance Abuse Professional and has passed a return to duty test.

### **1. Evidential Breath Testing Device (EBT)**

An EBT is a breath testing device that is capable of measuring an employee's alcohol concentration. It must be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level. An EBT must be capable of conducting an air blank and performing an external calibration check. For confirmation tests, the DOT requires the use of EBT's that can:

- Produce a printed result in triplicate or three consecutive identical copies of each breath test.
- Print a unique and sequential number of each completed test, with the BAT and the employee being able to read the number before each test and print the number of each copy of the result.
- Print, on each copy of the result, the manufacturer's name for the device, the device's serial number, and the time of the test.

## 2. Breath Alcohol Technician (BAT)

The alcohol tests must be performed by a Breath Alcohol Technician who is "trained to proficiency" in the operation of the EBT he/she is using and in the alcohol testing procedures specified in the regulations. The BAT must successfully complete an NHTSA approved course in the instruction that provides training in the principles of EBT methodology, operation, and the calibration checks. In addition, the BAT must complete training on the fundamentals of breath analysis for alcohol content, the procedures required for obtaining a breath specimen, and interpreting and recording EBT results.

The Agency Supervisor will designate the Agency BATs. In addition, the Agency may designate alternate BATs who will serve as BATs in situations where it is in the best interest of the Agency to test the individual as quickly as possible.

## 3. Alcohol Breath Process

The following procedures will be used to conduct the test:

- **Screening Test** – The BAT will inform the employee of the need to conduct a screening test. The BAT must open an individually sealed, disposable mouth piece in view of the employee and attach it to the EBT.

If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is required, and the employee may then return to his/her safety-sensitive position.

- **Confirmation Test** – If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test must be performed.

The confirmation test must be conducted at least 15 minutes, but not more than 20 minutes, after the completion of the initial test. This delay prevents any accumulation of alcohol in the mouth from leading to an artificially high reading. The BAT will inform the employee of the need to conduct a confirmation test. The employee will be instructed not to eat, drink, or put any object or substance in his/her mouth. The BAT will also instruct the employee not to belch to the extent possible while awaiting the confirmation test. The BAT must inform the employee that the test will be conducted at the end of the waiting period even if the employee has disregarded the instructions.

The confirmation test is conducted using the same procedures as the screening test. If the initial and confirmatory test results are not identical, the confirmation test result is deemed to be the final result.

If an employee has a concentration of 0.020 or greater, but less than 0.04, he/she will not be permitted to perform safety-sensitive functions for one shift, which will be no less than twenty-four (24) hours. If an employee has a concentration of 0.040 or greater, he/she will be removed from duty. The DOT regulation prohibits any employee with an alcohol concentration of 0.040 or greater from performing any safety-sensitive duties until he/she has been evaluated by a Substance Abuse Professional and has passed a return to duty test. The employee must be evaluated by a SAP and enter into a follow-up program. DOT regulations require that the SAP recommend both the number of required follow-up tests per year and the length of the follow-up testing contract. This can be up to 60 months with a minimum of six (6) tests in the first twelve (12) months.

Refusal by an employee to complete and sign the alcohol testing form, to provide an adequate amount of breath, (except as noted below), or otherwise to cooperate with the collection process must be noted on the form and the test will be terminated. The employee's actions will be regarded as a refusal. The test will be reported as a positive. The employee will be referred immediately to his/her supervisor for disciplinary action which will result in a recommendation for discharge.

If an employee attempts and fails to provide an adequate amount of breath, the Bat must note this on the form and immediately inform the DER.

The BAT shall direct the employee to obtain, from a licensed physician who is acceptable to the Agency, an evaluation concerning the employee's medical ability to provide an adequate amount of

breath. The evaluation should be made as soon as practical after the attempted breath test.

If an Agency physician determines that there was a valid medical reason for the inadequate amount of breath, the employee's failure to provide an adequate amount of breath will not be considered a refusal. If no valid medical reason is determined by an Agency physician, the inadequate amount of breath must be considered a refusal to take the test and it will be reported as a positive.

#### **4. Role of the Substance Abuse Professional**

The employee must be assessed by a Substance Abuse Professional (SAP) who must determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse. In addition, he/she must be advised of the resources available to evaluate and resolve problems associated with alcohol misuse, including names, addresses, and telephone numbers of appropriate counseling and treatment programs.

The role of the Substance Abuse Professional is to:

- Evaluate whether each safety-sensitive employee who has an alcohol test result of 0.040 or greater or has refused to submit to an alcohol test is in need of assistance in resolving problems associated with alcohol misuse.
- Evaluate whether each safety-sensitive employee who previously tested positive, and is eligible to return to work, has properly followed the SAP's recommendations for treatment.
- Determine the number of months a returning safety-sensitive employee will be subject to follow-up alcohol testing after returning to duty (after a minimum of six (6) tests required during the first twelve (12) months).
- The DOT and Federal Motor Carrier Safety Administration (FMCSA) requires follow-up testing for up to five (5) additional years as determined by the Substance Abuse Professional.
- A Substance Abuse Professional evaluation is required whether or not termination is a consequence of a confirmed positive test.

The Agency reserves the right to amend the Policy as appropriate, including the list of designated safety-sensitive positions.

## **VII. DEFINITION OF TERMS**

**Alcohol** – Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl. Alcohol use means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

**Alcohol Misuse** – Occurs when an employee arrives at the work site with alcohol in his/her system or the odor of alcohol on his/her breath; consumes a beverage containing alcohol while on duty, subject to duty, within four (4) hours of reporting for duty, or during a coffee and/or lunch break(s); or is late to work or absent from work due to the consumption of alcohol.

**Amphetamines** – Central nervous system stimulants that speed up the mind and body and most often appear in capsule form. Also called “speed” or “crystal”. They may be taken orally, injected or inhaled through the nose.

**Assay** – Initial test required by the regulations to be run on the urine specimen. This test is based on the ability of antibodies to recognize drugs in biological fluids. If any prohibited drug registers positive on this first test, the confirmatory test is then run.

**Cannabinoids (Marijuana)** – A hallucinogen made from a plant substance called Cannabis Sativa. It contains an active ingredient, the chemical Tetrahydrocannabinol (THC), ingested in various ways, primarily through smoking or eating. It acts almost exclusively on the brain, altering the proper interpretation of incoming messages, perception and senses.

**Cocaine** – A drug derived from the coca bush which is usually converted to a powder for use, often by inhaling through the nose or injecting in the veins. It is a powerful physical and mental stimulant. “Rock” or “Crack” is a variant.

**Controlled Substances** – Any drugs that are classified by the Drug Enforcement Administration (DEA) into the five schedules or classes on the basis of their potential for abuse, accepted medical use, and accepted safety for use under medical supervision. A drug in any of these schedules identifies that it is controlled and determines the nature of supervisory control that must be exercised. Medications containing any controlled substance must be prescribed by a physician who has a valid DEA number.

**DHHS** – Department of Health and Human Services.

**Disabling Damage** – Damage that precludes departure of the vehicle from the scene of the accident in its usual manner in daylight after simple repairs. It includes damage to vehicles that could have been operated but would have been further damaged if so operated.

## **DOT – Department of Transportation**

**Drug** – Any substance which affects an employee's ability to perform his/her job or poses a threat to the safety of others. This definition includes "over-the-counter" drugs and/or drugs which require a prescription or other written approval from a licensed practitioner/physician or dentist for their use.

**Drug Abuse** – Use of any illegal drug or controlled substance without a valid prescription, misuse of legally prescribed drugs, or use of illegally obtained prescription drugs. This includes use of prescription drugs legally prescribed to another individual other than one's self.

**Employee** – Any person who is required to possess a commercial driver's license and may be called on to operate a commercial vehicle for the Agency or transport hazardous materials (as set forth in federal regulations) as a part of his/her job responsibility. These individuals may be employees, full or part-time, contractors or subcontractors. This includes but is not limited to: full time regularly employed drivers, casual intermittent or occasional drivers, leased drivers and independent owner-operator contractors who are either directly employed by, or under lease to the Agency or who operate a commercial vehicle at the direction of, or with the consent of, the Agency. For the purposes of pre-employment/pre-duty testing only, the term employee includes a person applying to the Agency to drive a commercial vehicle.

## **ECS - Employee Counseling Service**

**Evidential Breath Testing (EBT) Device** – A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on the NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

**Extended Medical Family Leave** – An absence from work of thirty calendar days or more by an employee because of medical, physiological or physical disability on the part of the employee and/or a family member.

**Fit for Duty** – An employee is fit for duty when he/she is unequivocally able to perform his/her job duties, including when he/she is ready to work or working, without the presence of any alcohol or any specified drugs or their metabolites as prescribed by this Drug and Alcohol Policy.

**Follow-up Testing** – Unannounced drug and alcohol testing given to employees who have returned to duty after management referral to the Employee Assistance Program (EAP). This type of test may be done up to a total of five years from the date the employee returns to duty. A minimum of six tests during the first twelve months will be required.



**GC/MS** - Gas chromatography/mass spectrometry, which is the second or confirmatory test for the positive assay test. This is considered the most accurate and reliable test technique available.

**Hydrocodone (Oxycodone)** – A narcotic analgesic that will cause a decrease in heart rate, breathing and brain activity. Brand names include Percodan and Percocet.

**Illegal Use** – Use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.

**Incident** – A single event or occurrence which triggers drug and alcohol test, as defined in this Policy.

**Marijuana** – See Cannabinoids

**Medically Authorized** – A prescription or other writing from a licensed physician or dentist for the use of a drug in the course of medical treatment, including the use of methadone in a certified drug program.

**Medical Review Officer (MRO)** – An Agency authorized licensed physician, medical doctor or doctor of osteopathy responsible for receiving laboratory drug test results, who has knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.

**Metabolite** – A modified form of a drug that has been chemically altered by the body's metabolic system.

**On Duty** – An employee is "on duty" or "subject to duty" within the meaning of this provision:

- On his/her regularly scheduled shift.
- From the time he/she arrives on the property until the time he/she completes his/her work assignments and leaves the property.
- When reporting for a physical at the Agency designated site.
- When the employee has volunteered or has been assigned extra work on his/her day off, vacation, etc.

- While on an “on-call” status or prior to the start of duty, when told in advance, that he/she is expected to be on duty at some point in the future.
- When involved with Agency business while not on Agency property.
- Four (4) hours prior to duty, during which alcohol consumption is prohibited.

**Opiates** – Narcotic drugs which depress the body functions and reactions and in large doses may cause euphoria. Includes Opium, Morphine, Codeine, Heroin, Demerol and Percodan to name a few.

**Over-the Counter** – Includes medications that can be purchased without a prescription but which contain alcohol derivatives or other drugs which may affect an individual physiologically (cold medicines, back pain relievers, allergy tablets, etc.)

**Phencyclidine** – A drug which acts simultaneously as both a depressant and hallucinogen and often produces extreme mood shifts. Often called PCP, it is usually sold as a powder and may be mixed with marijuana.

**Positive Alcohol Test** – The presence of alcohol in the body at a concentration of 0.040 or greater as measured by an Evidential Breath Testing (EBT) device. Refusal to take a breath test without a valid medical explanation also constitutes a positive alcohol test.

**Reasonable Suspicion** – When specific, contemporaneous, articulatable observations concerning the appearance, behavior, speech, or body odor of the employee, as presented to the trained supervisor, establishes “reasonable suspicion” to conclude that substance use may be causing the behavior.

**Safety-Sensitive Functions** – Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment as required by §§ 392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of § 393.76 of this subchapter);

(5) All time loading or unloading a 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; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**Self-Referral** – An employee is considered a voluntary self-referral if he/she has not incurred discipline at the Final Warning Step (within a two (2) year period) of the Agency's disciplinary procedure. Voluntary participation at ECS will not adversely impact an individual's employment or promotional opportunities at the Agency. However, employees who do not make a conscientious attempt to overcome their drug and/or alcohol problems may experience performance problems as a result, and in that case will be subject to disciplinary action based on poor job performance, or as a result of a positive drug and/or alcohol screen, and will no longer be considered a voluntary self-referral.

**Substance Abuse Professional (SAP)** – A SAP can be (1) licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional, with knowledge of and clinical experience in diagnosis and treatment of drug and alcohol related disorders; of (2) additions counselor certified by the National Association of Alcoholism Drug Abuse Counselors Certification Commission, (3) Must have SAP certification, which includes Federal DOT Rules and Regulations.

**Unfit for Duty** – An employee is unfit for duty when he/she is not "Fit for Duty" as defined previously.

**Use** – The presence of any controlled substance in the body, or the consumption of any beverage, mixture or preparation, including any medication containing alcohol.

## **DOT Drug & Alcohol Policy Addendum**

**Effective Date: Jan. 6, 2020**

Any commercial motor vehicle driver for BIGHORN-DESERT VIEW WATER AGENCY (herein referred to as the "Company") who is subject to the FMCSA's drug and alcohol testing regulations in 49 CFR Part 382 must also comply with the CDL Driver Drug & Alcohol Clearinghouse regulations in Part 382, Subpart G.

The Company is prohibited from allowing any driver that has committed a testing violation and has not completed the return-to-duty process as outlined in the Company's DOT Drug & Alcohol Policy to perform safety-sensitive functions. Drivers will be notified by FMCSA when the Company obtains information from the Clearinghouse regarding their violation, or when information concerning the driver is added, revised, or removed.

**Reporting:** The following violations or milestones, on or after January 6, 2020, will be reported to the Clearinghouse for any Drivers who are subject to the Clearinghouse rules. The Company, its service providers, its Medical Review Officer(s), and/or its Substance Abuse Professional(s) as required by FMCSA directive to report:

- Any verified positive, adulterated, or substituted DOT drug test
- Any validated DOT alcohol test result of 0.04 or higher
- Any refusal to submit to a DOT required drug or alcohol test
- Any confirmed and recorded "actual knowledge" that the driver violated the DOT drug or alcohol rules, including:
  - Any on-duty alcohol use, including any citation for driving under the influence of alcohol (DUI/DWI) while driving a commercial motor vehicle
  - Any alcohol use within 4 hours before going on duty
  - Any alcohol use within 8 hours of an accident or before a post-accident test is complete (whichever occurs first)
  - Any prohibited drug use while on duty
- Successful completion of the return-to-duty process following treatment
- Any negative DOT return-to-duty test\*
- Successful completion of follow-up testing\*

*\*Only reported if the primary violation occurred on or after January 6, 2020.*

**Granting of Consent:** Drivers must grant consent for the Company to purchase Clearinghouse reports:

- Prior to employment with the Company, all drivers must create a Clearinghouse account and log in to permit the Company consent to acquire a "full" report.
- Drivers must sign a separate Consent "for Limited Queries" form allowing the Company access to "limited" queries each year. Drivers may limit the length of time that such consent is valid but making it valid for the duration of employment with the Company is recommended.
- The Company will notify the driver that they must immediately log into the Clearinghouse to provide permission so the Company may obtain the driver's full Clearinghouse record if a limited query exposes information about the driver. Such record will be acquired within 24 hours of the limited query.

A driver who refuses to grant the consent described above will not be allowed to perform any safety-sensitive duties as defined in §382.107. The driver will not be allowed to resume the safety-sensitive duties until the driver has granted the mandatory consent, the Company then obtains the report, and the Clearinghouse query shows that the driver is eligible to carry out safety-sensitive duties.

Driver Accounts: Drivers are required to have an online account at *clearinghousefmcsa.dot.gov* and are highly encouraged to provide an email address so they may be contacted. Drivers are permitted to see their own Clearinghouse records free of charge and may challenge the accuracy of information reported to the Clearinghouse, but not the accuracy of test results or refusals using the procedures listed in §382.717.

Queries: The Company will purchase reports (a.k.a. queries) from the Clearinghouse at the following times:

- Once a year for all drivers, and
- Preceding employment of any new drivers. Reports to the Clearinghouse will include:
  - the driver's name
  - date of birth
  - commercial driver's license number and state of issuance
  - violation and/or testing data

Notice of Violations: Drivers are required to notify the Company in writing if they have violated the drug and/or alcohol prohibitions of 49 CFR Parts 40 or 382 while employed with the Company. The statement must be received before the end of the business day the day after the driver received notification of the violation or prior to performing any safety-sensitive duties, whichever comes first.

Use of Information: The Company will only use the information obtained from the Clearinghouse to determine if the driver is prohibited from performing safety-sensitive duties. The Company will not divulge, nor permit any other person or entity to divulge, any driver-specific information from the Clearinghouse to any person or entity not directly involved in making such determination.