

LEWISBURG WATER AND WASTEWATER

**SUMMARY OF ALCOHOL AND SUBSTANCE ABUSE
AND TESTING POLICY FOR
STATE OF TENNESSEE COMMERCIAL DRIVER'S
LICENSE (CDL) DRIVERS**

NO SAFETY-SENSITIVE EMPLOYEE WHO IS REQUIRED TO HAVE A COMMERCIAL DRIVER'S LICENSE (CDL) WILL BE ALLOWED TO WORK UNDER THE INFLUENCE OF OR WITH DETECTABLE LIMITS OF ALCOHOL OR ILLEGAL DRUGS, NOR MAY THEY MANUFACTURE, DISTRIBUTE, POSSESS, OR USE SUCH DURING WORK HOURS. FURTHERMORE, NO SAFETY-SENSITIVE, CDL EMPLOYEE WILL BE ALLOWED TO WORK UNDER THE INFLUENCE OF PRESCRIBED OR OTHER LAWFULLY OBTAINED MEDICATIONS WHEN THE TAKING OF THESE MEDICATIONS IMPAIRS THE EMPLOYEE'S ABILITY TO PERFORM HIS OR HER JOB. APPROPRIATE DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION, WILL BE TAKEN AGAINST ALL EMPLOYEES NOT IN COMPLIANCE WITH THIS POLICY.

Effective January 1, 1996, all persons who must possess a commercial driver's license (CDL) as a requirement of employment are subject to higher standards and testing for the use of alcohol and drugs. Lewisburg Water and Wastewater will protect individual dignity, privacy, and confidentiality throughout the testing process.

The following testing will be performed by a professional testing laboratory:

- | | |
|--------------------------|--------------------|
| (1) Pre-employment | (4) Post Accident |
| (2) Random | (5) Return to Duty |
| (3) Reasonable Suspicion | (6) Follow-up |

-->VIOLATION OF THE FOLLOWING LISTED PROVISIONS WILL RESULT IN DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION <--

A. PRESCRIPTION AND OVER-THE-COUNTER DRUGS OR MEDICATIONS:

Any employee taking a prescribed medication or an over-the-counter medication that impairs his or her ability to perform their job shall report use of this medication to their supervisor.

B. ILLEGAL DRUG USAGE:

Use of illegal drugs is absolutely prohibited. Employees and prospective employees will be tested for use of the following illegal drugs: **marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine.** Employees may be tested for the use of other illegal drugs.

The manufacture, distribution or possession of illegal drugs while on duty is absolutely prohibited.

C. ALCOHOL CONSUMPTION:

1. Employees are strictly prohibited from consuming beverages or other substances containing alcohol, including medications such as cough syrup, during the duty period.
2. Employees are prohibited from consuming alcohol within **four** hours of the time they are to report for duty.
3. No employee should report for duty or remain on duty when his or her ability to perform assigned functions is adversely affected by alcohol regardless of when the alcohol was consumed.
4. No employee with a CDL should report for duty with a breath alcohol concentration (BAC) that registers 0.02 or greater.
5. Employees who report for duty with a BAC that registers above 0.02 but less than 0.04 will be relieved of duty for a period of twenty-four (24) hours.
6. Employees who report for duty with a BAC that registers above 0.02 but less than 0.04 will not be allowed to return to duty until they take a "return to duty" test and register less than 0.02.
7. Employees who report for duty with a BAC that registers greater than 0.04 are engaging in prohibited conduct and will not be allowed to return to duty until they take a "return to duty" test and register less than 0.02.
8. The manufacture, distribution or possession of alcohol while on duty is absolutely prohibited.

D. CONSEQUENCES:

Any employee who holds a CDL that has a verified positive drug or confirmed alcohol test that registers greater than 0.04 will be removed from his or her position, informed of the educational and rehabilitation programs available, and evaluated by a substance abuse professional (SAP), at an approved Employee Assistance Program (EAP) site. A verified positive drug and/or confirmed alcohol test will also result in disciplinary action up to and including termination.

Any supervisor/manager who knowingly disregards this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

LEWISBURG WATER AND WASTEWATER

ALCOHOL AND DRUG TESTING POLICY FOR COMMERCIAL DRIVER'S LICENSE (CDL) DRIVERS

Illegal and excessive use of drugs, along with the excessive use of alcohol has become wide spread in society, resulting in tremendous cost to employees and their families, employers, the State and our Nation. In order to promote good health and safety and reduce the cost to society, the Federal Government has passed, and LW&W actively supports the OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991 (Pub. L. 102-143, Title V).

I. POLICY

(A) LW&W employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a workplace environment free from the adverse effects of drug and alcohol substance abuse or misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of alcohol and controlled substances; and (4) to encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

**(B) THEREFORE, IT IS THE POLICY OF LEWISBURG WATER &
WASTEWATER THAT NO SAFETY-SENSITIVE EMPLOYEE THAT IS**

This document provides Department of Personnel policy and an overview of a specific section of the Federal Highway Administration (FHWA) drug use and alcohol testing rules published February 15, 1994. The information in this document is a general summary of the Federal rules. It should not be relied upon for the legal requirements of the rules. For more information on the rules, refer to the preamble of the rule (common to all modes of transportation) and 49 CFR Parts 40 and 382.

REQUIRED TO HAVE A COMMERCIAL DRIVER'S LICENSE (CDL) WILL BE ALLOWED TO WORK UNDER THE INFLUENCE OR WITH DETECTABLE LIMITS OF ALCOHOL OR ILLEGAL DRUGS, NOR MANUFACTURE, DISTRIBUTE, POSSESS, OR USE SUCH DURING WORK HOURS. FURTHERMORE, NO SAFETY-SENSITIVE, CDL EMPLOYEE WILL BE ALLOWED TO WORK UNDER THE INFLUENCE OF PRESCRIBED OR OTHER LAWFULLY OBTAINED DRUGS WHEN THE TAKING OF THESE DRUGS IMPAIRS THE EMPLOYEE'S ABILITY TO PERFORM HIS OR HER JOB. APPROPRIATE DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION, WILL BE TAKEN FOR THOSE EMPLOYEES NOT IN COMPLIANCE WITH THIS POLICY.

II. PURPOSE

The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from the risks posed by the use of alcohol and prohibited drugs. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs. The Federal Highway Administration (FHWA) of the U.S. Department of Transportation has enacted 49 CFR Part 382 et seq., and Part 395.2 ("the rules") that mandate urine drug testing and evidential breath testing device (EBT) alcohol testing for safety-sensitive positions and prevents performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (USDOT) has also enacted 49 CFR Part 40 that sets standards for the collection and testing of urine and breath specimens.

III. APPLICABILITY

Pursuant to FHWA Rule 49 CFR Part 382 et seq., as of January, 1996, LW&W will implement mandatory alcohol, and controlled substance ("drug") testing of persons in, or applying for safety-sensitive positions requiring CDLs. This policy applies to those persons. The testing will be performed by professionals under contract with LW&W, and conform to guidelines and requirements established by Federal Rule 49 CFR Part 40.

Effective January, 1996, each person directing or supervising persons with CDLs will undergo training regarding the implementation of the alcohol and drug testing policy, and must implement the policy in the workplace.

IV. PENALTIES

Employees who receive a verified positive drug or confirmed alcohol presence test will be removed from duty in the manner described herein, and will also be subject to **disciplinary action up to and including termination**. Applicants who receive a verified positive drug or confirmed alcohol presence test will be subject to withdrawal of any offer of employment extended prior to the test.

V. DEFINITIONS

- (A) "**Accident**" - an incident involving a commercial motor vehicle in which there is either a fatality, an injury treated away from the scene, or a vehicle is required to be towed from the scene.
- (B) "**Alcohol**" - the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.
- (C) "**Alcohol use**" - the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- (D) "**Commercial motor vehicle (CMV)**" - a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle-
1. Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
 2. Has a gross vehicle weight rating of 26,001 or more pounds; or
 3. Is designed to transport 16 or more passengers, including the driver; or
 4. Is of any size and is used in the transportation of hazardous materials requiring placards.
- (E) "**Driver**" - any person who has a CDL and operates a commercial motor vehicle. For the purpose of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.
- (F) "**Evidential breath testing device (EBT)**" - A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).
- (G) "**Medical Review Officer (MRO)**" - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
- (H) "**Performing (a safety-sensitive function)**" - any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety sensitive functions.

(I) "**Prohibited Substances**" - addressed by this policy include the following:

1. **Illegally Used Controlled Substances or Drugs** - Any illegal drug or any substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1308.11 through 1308.15. This includes, but is not limited to: **marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine**, as well as **any drug not approved for medical use** by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.
2. **Legal Drugs** - The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected should be reported to supervisory personnel and medical advice should be sought, as appropriate, before performing work-related duties.

A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal drugs while performing LW&W business, including safety-sensitive functions, is prohibited.

3. **Alcohol** - The use of beverages containing alcohol or substances including any medication such that alcohol is present in the body while performing LW&W business, including safety-sensitive functions is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device (EBT).

(J) "**Refusal to submit (to an alcohol or controlled substance test)**" – A driver (1) fails to provide adequate **breath** for testing without a valid medical explanation after he or she has received notice of the requirement for **breath** testing, (2) fails to provide adequate **urine** for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in **conduct** that clearly obstructs the testing process.

(K) "**Safety-sensitive function**" - Any of those on-duty functions set forth in 49 CFR Part 395.2 On-Duty Time, paragraphs (1) through (7) as listed below:

1. All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.

2. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs), 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.
4. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
5. All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
6. All time spent performing the driver requirements associated with an accident.
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

(L) "**Substance abuse professional (SAP)**" - A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

(M) "**Trained Supervisor**" - A CDL driver's supervisor trained as required under the rules to identify the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances by employees.

(N) "**LW&W**" - reference in this policy shall mean Lewisburg Water and Wastewater, a City owned utility.

VI. PROHIBITED ALCOHOL AND CONTROLLED SUBSTANCE-RELATED CONDUCT

The following alcohol and controlled substance-related activities are prohibited by the FHWA drug use and alcohol misuse rules for CDL drivers of commercial motor vehicles (CMVs):

- (A) **Reporting** for duty or **remaining** on duty to perform safety sensitive functions while having an alcohol concentration of 0.04 or greater.
- (B) Being on duty or operating a CMV while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter), unless the packaging seal is unbroken.
- (C) Using alcohol while performing LW&W business, including safety-sensitive functions, or within four (4) hours prior to performing safety-sensitive functions.

- (D) When required to take a post-accident alcohol test, using alcohol with eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- (E) Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion or follow-up testing requirements.
- (F) Reporting for duty or remaining on duty, requiring the performance of safety-sensitive functions, when the driver uses any controlled substance, except when instructed by a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV.
- (G) Reporting for duty, remaining on duty or performing a safety-sensitive function, if the driver tests positive for controlled substances.
- (H) No supervisor shall allow a driver to perform a safety-sensitive function unless the result of the breath alcohol test indicates a breath alcohol level of less than **0.02**, and the supervisor has received a controlled substance test result for the driver from the medical review officer (MRO) indicating a verified negative result.
- (I) If the results of the driver's alcohol test indicate a breath alcohol concentration of **0.02** or greater, but less than **0.04**, the driver shall not be permitted to perform safety-sensitive functions until he/she takes a "return to duty" test and registers less than 0.02, but not less than 24 hours following the administration of the test.
- (J) The misuse or abuse of legal drugs while performing LW&W business, including safety-sensitive functions.

VII. CONSEQUENCES TO DRIVERS ENGAGING IN CONDUCT PROHIBITED BY THE FEDERAL HIGHWAY ADMINISTRATIONS DRUG USE AND ALCOHOL MISUSE RULES

Drivers who are known to have engaged in prohibited behavior, with regard to alcohol misuse or use of controlled substances, are subject to the following consequences:

- (A) Drivers shall not be permitted to perform safety-sensitive functions.
- (B) Drivers shall be advised by their supervisor of the resources available to them in evaluating and resolving problems associated with the misuse of alcohol or use of controlled substances including a referral to an approved Employee Assistance Program (EAP).

- (C) Drivers shall be evaluated by a substance abuse professional (SAP) who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.
- (D) Before a driver returns to duty requiring performance of a safety-sensitive function, he or she shall undergo a return-to-duty alcohol test with a result indicating a breath alcohol level of less than **0.02** if the conduct involved alcohol, or a controlled substance test with a verified **negative** result if the conduct involved controlled substance use.
- (E) In addition, each driver identified as needing assistance in resolving problems associated with alcohol or controlled substances shall be evaluated by a SAP to determine that the driver has followed the rehabilitation program prescribed.
- (F) The driver shall also be subject to unannounced follow-up alcohol and controlled substance testing. The number and frequency of such follow-up testing shall be as directed by the SAP, and consist of at least six tests in the first 12 months.
- (G) Any safety-sensitive, CDL employee engaging in the manufacture, distribution, possession, or use of prohibited substances on LW&W premises or while on LW&W business will be subject to **disciplinary action** up to and including **termination**. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.
- (H) Any safety-sensitive, CDL employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty by a trained supervisor shall be suspended from job duties pending verification of condition. CDL employees found to be under the influence of prohibited substances or who fail to pass a drug or alcohol test shall be removed from duty and subject to disciplinary action, up to and including termination. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as described in this policy statement.
- (I) No safety-sensitive, CDL employee should report for duty or remain on duty when his or her ability to perform assigned functions is adversely affected by alcohol or when his or her breath alcohol concentration is **0.02** or greater. No safety-sensitive, CDL employee shall use alcohol while on duty. No safety-sensitive, CDL employee shall have used alcohol within **four** hours of reporting for duty. Violation of these provisions is prohibited and shall result in disciplinary action up to and including termination.
- (J) All safety-sensitive, CDL employees will be subject to **urine** drug testing and **breath alcohol** testing. Any employee who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty immediately, and their employment terminated. Refusal can include an inability to provide a specimen or breathe sample without a valid medical explanation, as well as a

verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

- (K) All safety-sensitive, CDL employees are encouraged to make use of the available resources for treatment for alcohol and substance abuse problems. Under certain circumstances, employees may be required to undergo treatment for substance abuse. Any safety-sensitive, CDL employee who refuses or fails to comply with LW&W requirements for treatment, after care, or return to duty shall be subject to disciplinary action, up to and including termination.
- (L) Any safety-sensitive, CDL employee who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds set forth in 49 CFR Part 40 will be evaluated by a SAP. The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited substance abuse or misuse.
- (M) Assessment by a SAP does not shield an employee from disciplinary action or guarantee employment or reinstatement with LW&W. LW&W disciplinary rules, policies and procedures should be consulted to determine the penalty for performance-based infractions and violation of policy provisions. Each disciplinary or termination action shall be handled on a case-by-case basis.
- (N) If an employee is allowed to return-to-duty, he or she must properly follow the rehabilitation program prescribed by the SAP, the employee must pass return to-duty drug and alcohol tests, and be subject to unannounced follow-up tests for a period of **one to five years. The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider.** Employees will be allowed to take accumulated sick leave, annual leave, compensatory leave and any leave allowed under the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), to participate in the prescribed rehabilitation program.
- (O) CDL employees removed from safety sensitive functions as a result of tests that indicate the misuse of alcohol and/or the use of controlled substances may, at the discretion of the appointing authority, be allowed to take annual and/or compensatory leave or, after due process, be placed on leave without pay, including leave allowed under the FMLA and the ADA, for the removal periods required under the rules for such drivers.

VIII. TYPES OF TESTING

All holders of CDL's within or joining LW&W will be tested for **alcohol** and **controlled substances**. The following are the types of tests required to be performed:

- **Pre-employment Testing**
- **Random Testing**
- **Reasonable Suspicion Testing**
- **Post-Accident Testing**
- **Return-to-Duty Testing**
- **Follow-up Testing**

(A) SPLIT SAMPLE PROCEDURES

Controlled substances tests conducted on CDL drivers must follow split sample procedures. Under this provision, a driver whose urine sample has tested positive for a controlled substance has the option (within 72 hours of being notified by the MRO) of having the other portion of the split sample tested at another laboratory. The driver will be required to pay for the second test in advance. If the second portion of the sample also tests positive, then the driver is subject to the sanctions contained in the regulations and will not be reimbursed for such test. If the second portion produces a negative result, or for any reason the second portion is not available, the test is considered negative and no sanctions are imposed and the driver will be reimbursed by LW&W for the cost of the test.

(B) PRE-EMPLOYMENT ALCOHOL AND CONTROLLED SUBSTANCE TESTING

- (1) Prior to the first time a driver performs safety-sensitive functions as a LW&W employee, the driver must submit to testing for alcohol and controlled substances. The tests shall be conducted after the offer of employment has been accepted, but before the individual reports for duty.
- (2) No driver shall be allowed to perform a safety-sensitive function unless the result of The breath alcohol test indicates a breath alcohol level of less than **0.02**, and the driver's supervisor has received a controlled substance test result from the medical review officer (MRO) indicating a verified **negative** result.
- (3) If the results of the driver's alcohol test indicate a breath alcohol concentration of 0.02 or greater, but less than 0.04, the driver shall not be permitted to perform safety-sensitive functions until he/she takes a "return to duty" test and registers less than 0.02, but not less than 24 hours following the administration of the test.

(C) RETURN-TO-DUTY AND FOLLOW-UP TESTING

(1) RETURN-TO-DUTY TESTING

LW&W shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding alcohol issue, the driver shall undergo a return-to-duty alcohol test indicating a breath alcohol concentration of less than 0.02.

LW&W shall also ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct. Regarding controlled substance use, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified **negative** result for controlled substances use.

In the event a return-to-duty test is required, the driver must also be evaluated by a SAP and participate in any assistance program, such as the Employee Assistance Program (EAP), prescribed. Drivers will be allowed to take the following accumulated leave they are eligible for: annual, compensatory, leave without pay (after due process) FMLA, ADA, for return-to-duty testing and SAP evaluation.

(2) FOLLOW-UP TESTING

Following a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, LW&W shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the SAP. The driver shall be subject to a minimum of six follow-up controlled substance and/or alcohol tests in the first 12 months.

Alcohol follow-up testing shall be performed only when the driver is performing safety-sensitive functions, or immediately prior to performing or immediately after performing safety-sensitive functions. Drivers referred for follow-up testing shall be considered to be on duty during the time period that they are being tested, including travel time to and from the testing site, and shall be compensated accordingly.

(D) POST-ACCIDENT ALCOHOL AND CONTROLLED SUBSTANCES TESTING

- (1) As soon as practicable following an accident involving a commercial motor vehicle, LW&W shall test for alcohol and controlled substances each surviving driver when either:
 - a) The accident involved a fatality; or
 - b) The driver receives a citation under state or local law for a moving traffic violation

arising from the accident.

- For the purpose of this policy, an accident is defined as an incident involving a commercial motor vehicle in which there is either a fatality, an injury treated away from the scene, or a vehicle is required to be towed from the scene.

(2) When a required controlled substances test has not been administered within a reasonable time frame following the accident, the following actions shall be taken:

Time

Elapsed

Action Required

2 hours If the driver has not submitted to an alcohol test at this time, LW&W shall prepare and maintain on file a record stating the reason a test was not promptly administered.

8 hours Cease attempts to administer an alcohol test, and prepare and maintain the record described above.

32 hours If the driver has not submitted to a controlled substance test at this time, the employer shall cease attempts to administer the test, and prepare and maintain the record described above.

(3) IMPORTANT NOTE:

Nothing in this document (or the rule itself) should be construed as to require the delay of necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(4) *Driver's responsibility:*

A driver who is subject to post-accident testing must remain available, or the employer may consider the driver to have refused to submit to testing. The driver subject to post-accident testing must refrain from consuming alcohol for **eight** hours following the accident, or until he or she submits to an alcohol test, whichever comes first.

(5) *LW&W's responsibility:*

- (a) The employer (LW&W) shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a CMV, so that drivers will be able to comply with the requirements of this rule.

- b) **The FHWA recognizes post-accident tests conducted by Federal, State, and local officials as meeting the requirements of this rule under the following conditions:
- The official must have independent authority to conduct the test;
 - The test must conform to Federal, State or local requirements;
 - Alcohol tests require blood or breath sample; and
 - Controlled substances tests require urine sample.
- c) Drivers referred for post-accident testing shall be considered to be on duty during the time period that they are being tested, including travel time to and from the testing site, and shall be compensated accordingly.

IX. RANDOM ALCOHOL AND CONTROLLED SUBSTANCES TESTING

(A) Random Alcohol Testing Requirements

Random alcohol testing shall be conducted in accordance with the following requirements:

- (1) Random alcohol testing shall be administered at a minimum annual rate of **25 percent** of the average number of driver positions.
- (2) LW&W shall ensure that random alcohol tests are unannounced and spread reasonably throughout the calendar year.
- (3) LW&W shall ensure that drivers selected for random alcohol tests proceed immediately to the testing site upon notification of being selected.
- (4) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, immediately prior to performing or immediately after performing safety-sensitive functions.
- (5) In the event a driver, who is selected for a random alcohol test, is on vacation or an extended medical absence, LW&W can either select another driver for testing or keep the original selection confidential until the driver returns.

(B) Alcohol Testing Rate

- (1) The FHWA Administrator may decide to increase or decrease the minimum annual

percentage rate for random alcohol testing based on the reported violation rate for the entire industry. The decision to change the testing rate will be made according to the following results:

<u>Violation Rate</u>	<u>Testing Rate</u>
Less than .5% for 2 consecutive years	10%
.5% - 1.0%	25%
1.0% or greater	50%

- (2) Each year the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random alcohol testing of drivers. The new rate will become applicable on January 1 of the following year.
- (3) The first year a reduction in the minimum rate would be possible is 1999, due to the fact the data must be for the entire industry (for two years), which would be reported in 1998. Only one year of data is necessary to raise the minimum rate; however, two years are required to lower the rate.

(C) Random Controlled Substances Testing

- (1) Random controlled substances testing shall be conducted in accordance with the following requirements:
 - a) Random controlled substances testing shall be administered at a minimum annual rate of **50 percent** of the average number of driver positions.
 - b) LW&W shall ensure that random controlled substances tests are unannounced and spread reasonably throughout the calendar year.
 - c) LW&W shall ensure that drivers selected for random controlled substances tests proceed immediately to the testing site upon notification of being selected.
 - d) In the event a driver, who is selected for a random controlled substances test, is on vacation or an extended medical absence, the LW&W can either select another driver for testing or keep the original selection confidential until the driver returns.

(2) ***CONTROLLED SUBSTANCES TESTING RATE***

The FHWA has proposed to lower the random testing rate to 25 percent if the industry-wide random positive rate is less than 1.0 percent for two consecutive calendar years, while testing at 50 percent. The rate would increase back to 50 percent if the industry random positive rate were 1.0 percent or higher for any subsequent year.

(D) **On-Duty Time**

Drivers referred for random testing shall be considered to be on duty during the time period that they are being tested, including travel time to and from the testing site, and shall be compensated accordingly.

X. REASONABLE SUSPICION ALCOHOL AND CONTROLLED SUBSTANCES TESTING

- (A) LW&W must require a driver to submit to an alcohol or controlled substance test when LW&W has **reasonable suspicion** to believe the driver has violated the alcohol or controlled substances prohibitions.

"Reasonable Suspicion" - Belief that the driver has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulable **observations** concerning the appearance, behavior, speech or body odors of the driver.

(B) **SUPERVISOR TRAINING**

The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or LW&W official who is trained in accordance with the following requirements:

- (1) LW&W must ensure persons designated to determine whether reasonable suspicion exists to require a driver to undergo alcohol or controlled substances testing receive **four** hours of training on detection and documentation of alcohol misuse and controlled substances use.
- (2) The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

(C) **ALCOHOL**

Alcohol testing is authorized only if the observations are made during, just before, or just after the period of the work day the driver is required to be in compliance.

If a reasonable suspicion alcohol test is not administered within **two** hours following the observations, LW&W official shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within **eight** hours, LW&W shall cease attempts to administer the test, and shall prepare and maintain the record listed above.

The supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test, in order to preserve protection for the drivers.

(D) RECORDS

A written record shall be made of the observations leading to a controlled substances test, and signed by the supervisor or official who made the observations.

NOTE:

The mere **possession of alcohol** does not constitute a need for reasonable suspicion testing, which must be based on observations concerning the driver's appearance, behavior, speech, or body odor.

(E) ON-DUTY TIME

Drivers referred for reasonable suspicion testing shall be considered to be on duty during the time period that they are being tested, including travel time to and from the testing site, and shall be compensated accordingly.

XI. RETENTION OF RECORDS

(A) This document explains which controlled substance and alcohol test records must be completed and maintained, where they must be maintained and for how long. All records shall be maintained in a secure location with controlled access.

(B) Required period of retention:

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

(C) Types of records required to be maintained:

(1) Records related to the collection process:

- Collection logbooks (if used)
- Documents related to the random selection process
- Calibration documentation for EBT's
- Documentation of Breath Alcohol Technician (BAT) training
- Documentation of reasoning for reasonable suspicion testing
- Documentation of reasoning for post-accident testing
- Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing
- Consolidated annual calendar year summaries

(2) Records related to the driver's test results:

- LW&W's copy of the alcohol test form, including results
- LW&W's copy of the drug test chain of custody and control form
- Documents sent to LW&W by the Medical Review Officer
- Documentation of any driver's refusal to submit to a required alcohol or controlled substance test
- Documents provided by a driver to dispute results of test

(3) Documentation of any other violations of controlled substance use or alcohol misuse rules

(4) Records related to evaluations and training:

- Records pertaining to SAP's determination of driver's need for assistance
- Records concerning a driver's compliance with SAP's recommendations

(5) Records related to education and training:

- Materials on drug and alcohol awareness, including a copy of LW&W policy on drug use and alcohol misuse
- Documentation of compliance with requirement to provide drivers with educational material, including driver's signed receipt of materials
- Documentation of supervisor training
- Certification that training conducted under this rule complies with all requirements of the rule

(6) Records related to drug testing:

- Agreements with collection site facilities, laboratories, and MROs.
- Names and positions of officials and their role in LW&W's alcohol and controlled substance testing program
- Quarterly statistical summaries of urinalysis (40.29 (g) (6))
- LW&W's drug testing policy and procedures

(D) Location of records:

All required records shall be maintained in a secure location with limited access. Records shall be made available for inspection at LW&W's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

XII. MEDICAL REVIEW OFFICER'S NOTIFICATION OF TEST RESULTS AND RETENTION OF RECORDS

(A) The **Medical Review Officer (MRO)** is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program. The MRO shall have knowledge of substance abuse disorders and have 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.

(B) EMPLOYER NOTIFICATION

- (1) The MRO may report controlled substances test results to LW&W by any means of communication; however, a signed, written notification must be forwarded within three business days of the completion of the MRO's evaluation.
- (2) The MRO must report to LW&W the following:
 - a) That the controlled substances test being reported was in accordance with 49 CFR Part 40.
 - b) The name of the individual for whom the test results are being reported.
 - c) The type of test indicated on the custody and control Form (random, pre-employment, etc.).
 - d) The date and location of the test collection.
 - e) The identification of the persons or entities performing the collection and analysis of the specimens, and serving as the MRO for the specific test.
 - f) The verified results of the controlled substances test (positive or negative) and, if positive, the identity of the controlled substance(s) for which the test was verified positive.
 - g) That the MRO has made every reasonable attempt to contact the driver.

(C) EMPLOYEE NOTIFICATION

- (1) Prior to verifying a "positive" result, the MRO shall make every reasonable effort to contact the driver (confidentially), and afford him or her the opportunity to discuss the test result. If after making all reasonable efforts and documenting them, the MRO is unable to reach the driver directly, the MRO shall contact a designated

management official, who shall direct the driver to contact the MRO as soon as possible (within 24 hours).

- (2) Under **split-sample collection** procedures, the driver has **72** hours following notification of a positive result to request the secondary sample be analyzed. In the event a split-sample was not taken, or was of inadequate quantity, the original test would be voided, and the driver would not be subject to a retest.
- (3) While the primary sample is tested at specific thresholds for each controlled substance, the secondary (split) sample is analyzed only for the presence of controlled substances. If a negative result is reached on the secondary test, the original test results are disregarded.

(D) RECORD RETENTION

- (1) The MRO shall maintain all dated records and notifications for verified **positive** controlled substances test results, identified by individual, for a period of **five years**.
 - (2) The MRO shall maintain all dated records and notifications for **negative and canceled** controlled substances test results, identified by individual, for a period of **one year**.
- (E) The MRO shall not release the individual controlled substances test results of any driver to any person without a specific, written authorization from the tested driver. However, this shall not prohibit the MRO from releasing results to LW&W or Federal, State, or local officials with regulatory authority over the controlled substances testing program.

XIII. RELEASE OF ALCOHOL AND CONTROLLED SUBSTANCES TEST INFORMATION BY PREVIOUS EMPLOYERS

- (A) LW&W may obtain from any previous employer of a driver, provided the driver has given his or her written consent, any information concerning the driver's participation in a controlled substances and alcohol testing program.
- (B) LW&W must obtain and review the information listed below from any employer for which the driver performed safety-sensitive functions during the previous two years. The information must be obtained and reviewed no later than 14 days after the first time a driver performs safety-sensitive functions. The information obtained must include:
 - (1) Information on the driver's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated.
 - (2) Information on the driver's controlled substances test in which a positive result was indicated.
 - (3) Any refusal to submit to a required alcohol or controlled substance test.

- (C) If the driver stops performing safety-sensitive functions for LW&W before expiration of the 14-day period or before LW&W has obtained the information listed above, LW&W must still obtain the information. For **example**, if a driver quits after one week of employment and the information has not been obtained, the LW&W must still obtain the information.
- (D) LW&W must provide to each of the driver's previous employers of the past two years a written authorization from the driver for release of the required information. The release of this information may take the form of *personal interviews, telephone interviews, letters, or any other method that ensures confidentiality*. LW&W must maintain a written, confidential record with respect to each past employer contacted.
- (E) LW&W may not use a driver to perform safety-sensitive functions if LW&W obtains information indicating the driver has tested positive for controlled substances, tested at or above 0.04 breath alcohol concentration, or refused to test unless the LW&W has evidence the driver has been evaluated by a substance abuse professional, completed any required counseling, passed a return-to-duty test, and been subject to follow-up testing.

XIV. ANNUAL CALENDAR YEAR SUMMARY

- (A) LW&W shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs. LW&W shall complete the annual summary by March 15 each year, covering the previous calendar year.

(B) MANAGEMENT INFORMATION SYSTEM

- (1) Each year in January, the FHWA will notify a select number of employers to submit their calendar year summary of alcohol and controlled substances test results. Upon notification, the employer shall submit the required summary to the FHWA by March 15 of that year, to the location specified. The report shall be accurate and in the form and manner prescribed by the FHWA. When the report is submitted by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official.
- (2) The report shall contain all the information outlined in 49 CFR Part 382.403. Sample forms detailing the required information shall be made available upon request. This information is only required to be submitted when requested by the FHWA. If not requested, the annual calendar year summary shall be maintained by the employer for a period of five years, and presented for review, upon request from an agent of the U.S. Department of Transportation. If the report is submitted to the FHWA when not requested, it will be discarded.

XV. PROPER APPLICATION OF THE POLICY

LW&W is dedicated to assuring fair and equitable application of this substance abuse and testing policy. Therefore, supervisors and managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

XVI. NOTICE OF POLICY. EDUCATIONAL MATERIALS AND CERTIFICATE OF RECEIPT

- (A) LW&W shall notify its CDL drivers of this policy, and that the alcohol and controlled substances testing specified herein is required by Federal law. CDL employees shall also be provided with a copy of this policy and educational materials that explain the policy requirements and procedures with respect to meeting these requirements.
- (B) LW&W shall ensure that a copy of these materials is distributed to each CDL driver prior to the start of alcohol and controlled substances testing under this policy, and to each CDL driver subsequently hired or transferred to a position requiring a CDL.
- (C) LW&W shall ensure that each CDL driver is required to sign a statement certifying that he or she has received a copy of the educational materials required in this policy. LW&W shall maintain the original of the signed certificate, and may provide a copy of the certificate to the CDL driver.

LEWISBURG WATER AND WASTEWATER
COMMERCIAL DRIVERS LICENSE (CDL) DRIVERS DRUG AND ALCOHOL TESTING
POLICY CONTACT

Any person with questions regarding LW&W CDL Drivers Drug and Alcohol Testing Policy or any other aspect of the drug and alcohol testing program should contact the following representatives:

Name: Trigg Cathey
Title: General Manger
Address: 100 Water Street
Lewisburg, TN 37091
Telephone: 931-359-6831

Name: Lisa Parsons
Title: Administrative Assistant
Address: 100 Water Street
Lewisburg, TN 37091
Telephone: 931-359-6831