

Warren County Board of Supervisors

RESOLUTION NO. 77 OF 2020

RESOLUTION INTRODUCED BY SUPERVISORS SIMPSON, GERAGHTY, FRASIER, BRAYMER, CONOVER, MAGOWAN, MCDEVITT, MERLINO AND WILD

ADOPTING REVISED WARREN COUNTY ALCOHOL & DRUG TESTING POLICY FOR EMPLOYEES HOLDING A COMMERCIAL DRIVERS LICENSE (CDL)

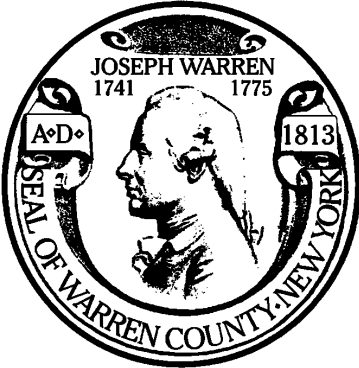
WHEREAS, the Board of Supervisors adopted an Alcohol and Drug Testing Policy for Warren County employees in possession of a Commercial Drivers License (CDL) by Resolution No. 570 of 1995, and previously amended by Resolution No. 137 of 2019, and

WHEREAS, the Director of Human Resources presented to the Personnel & Administration Committee a revised policy which has been substantially updated, and

WHEREAS, the Personnel & Administration Committee has reviewed the changes presented by the Director of Human Resources and has recommended that the same be advanced to the full Board of Supervisors for consideration, now, therefore, be it

RESOLVED, that the Warren County Alcohol & Drug Testing Policy Commercial Driver License (CDL) annexed hereto, be and the same hereby is, adopted as the official Policy for Warren County, and be it further

RESOLVED, that any and all prior Alcohol & Drug Testing Policies for employees holding Commercial Drivers Licenses, Resolutions or parts thereof inconsistent with the annexed are hereby repealed effective February 21, 2020.



**Warren County
Alcohol & Drug Testing Policy
Commercial Driver License (CDL)**

Adopted: _____

TABLE OF CONTENTS

1.0	Statement of Purpose and Scope of Policy	5
2.0	Definitions	5
3.0	Prohibited Conduct	7
3.1	Prohibited Conduct Concerning Driver’s Use of Drugs and Alcohol	7
3.2	Refusal to Submit	8
3.3	Consumption of Food or Food-Products Containing ‘Hemp’	9
3.4	Prohibition on Supervisor or Manager Permitting a Driver to Work	9
3.5	Prohibition Against Working While Using Any Drug Medications Which Can Affect Safety or Performance	9
4.0	Required Tests and Past Test Results Information	10
4.1	<u>The FMCSA Clearinghouse</u>	<u>10</u>
4.2	Pre-Employment Drug Testing and Past Test Results Information	11
4.3	Post-Accident Drug and Alcohol Testing	11
4.4	Random Drug and Alcohol Testing	12
4.5	Reasonable Suspicion Drug and/or Alcohol Testing	13
5.0	Self-Identification of Substance Abuse Problem	14
6.0	Drug and Alcohol Testing Procedure	14
6.1	Drug Testing Procedures	15
6.2	Alcohol Testing Procedures	16
7.0	Consequences for Policy Violations	17
7.1	Automatic Removal From Safety-Sensitive Function	17
7.2	Refusal to Submit	17
7.3	Positive Test Results	18
7.4	Other Policy Violations	18
7.5	Potential Forfeiture of Worker’s Compensation and/or Unemployment Compensation Benefits	18
8.0	Notification of Test Results	19
9.0	Testing Expenses and Compensation for Tests	19
10.0	Recordkeeping, Access to Records and Confidentiality of Test Results	19
11.0	Inspections	19
11.1	Inspections of County Property	19
11.2	Inspections of Driver Property	19
12.0	Employee Assistance Program (“EAP”)	20
13.0	Applicants Policy	20

INTRODUCTION

On February 15, 1994 the United States Department of Transportation (DOT) published the final rules for drug and alcohol testing of Commercial Driver License (CDL) holders. The final rules must be implemented by all employers of CDL holders by January 1, 1996.

These rules prohibit CDL holders from engaging in certain drug and alcohol related conduct and require employers to test employees to ensure compliance with the drug and alcohol rules.

This policy has been developed as a means to ensure that all Warren County employees who hold a CDL are informed of the FEDERAL rules for the drug and alcohol testing and the consequences of any violation.

IF YOU POSSESS A CDL AND DRIVE, INSPECT, REPAIR, LOAD OR UNLOAD A COMMERCIAL VEHICLE ON COUNTY BUSINESS, THE FOLLOWING RULES APPLY TO YOU.

IF YOU ARE A CDL HOLDER AND CURRENTLY OCCUPY A DEPARTMENT OF PERSONNEL ADMINISTRATION DESIGNATED SAFETY-SENSITIVE CLASSIFICATION, YOU ARE SUBJECT TO SUBSTANCE TESTING UNDER BOTH STATE AND FEDERAL AUTHORITIES.

**TO ALL WARREN COUNTY EMPLOYEES WHO HOLD A CLASS A OR CLASS B
COMMERCIAL DRIVER LICENSE (CDL)**

Federal Highway Administration (FHWA) regulations require annual random, unannounced alcohol and controlled substance (drug) testing of all CDL holders. The penalties for violation of the new FHWA alcohol misuse and controlled substance use regulations are considerable. If a CDL holder tests positive for drug use or the misuse of alcohol the CDL holder will be prohibited from performing safety-sensitive functions associated with the operation of a commercial vehicle and the CDL holder may be subject to a \$10,000 fine under 49 U.S.C. 521 (b). Additionally, Warren County will take corrective disciplinary action up to and including termination for any employee found in violation of the FHWA regulations.

If you are experiencing difficulty with the use of alcohol or drugs, you are strongly encouraged to notify your supervisor, or Department Head. Warren County will assist you as much as is operationally practicable in helping you to overcome problems associated with substance abuse and protect your employment status. Please see the section entitled "Where to Get Help".

**WARREN COUNTY
SUBSTANCE ABUSE POLICY FOR
COMMERCIAL MOTOR VEHICLE DRIVERS**

1.0 STATEMENT OF PURPOSE AND SCOPE OF POLICY

- 1.1 Warren County is firmly committed to ensuring a safe, healthy, productive and efficient work environment for our employees and the public we serve. The County has a vital interest in ensuring a safe, healthy and efficient working environment and the prevention of accidents and injuries which can result from the misuse of alcohol or controlled substances by drivers of the County's commercial motor vehicles. For these reasons, and as required by the drug and alcohol testing regulations of the Federal Motor Carrier Safety Administration ("FMCSA"), the County has established this substance abuse policy for the drivers of its commercial motor vehicles. Drug and alcohol testing is an integral part of our policy and program. Compliance with this policy is required by applicants as a condition of employment and by drivers as a condition of continued employment.
- 1.2 This policy applies to any "driver" (as defined in Section 2.6 of this policy) who operates a "commercial motor vehicle" (as defined in Section 2.3 of this policy) for or on behalf of the County and who is required to have a commercial driver's license ("CDL") in order to operate that vehicle. The policy also applies to all applicants who seek employment for such driver positions. Additionally, this policy applies to any County supervisor and other managerial personnel who drive or may be required to drive a commercial motor vehicle from time-to-time on the County's behalf.
- 1.3 This policy explains the FMCSA's drug and alcohol regulations and the County's own policies with respect to the use controlled substances or misuse alcohol. Provisions of this policy which are imposed under the County's independent authority are specifically noted by text which has been underlined.
- 1.4 The County maintains a policy of non-discrimination and will endeavor to make reasonable accommodations to assist recovering addicts or alcoholics and those having a medical history reflecting treatment for substance abuse conditions. We encourage employees to seek assistance before drug and alcohol use renders them unable to perform their essential job functions or jeopardizes the health and safety of themselves or others.
- 1.5 Any questions regarding the meaning or application of this policy should be directed to the Program Administrator (Warren County Department of Human Resources.)

2.0 DEFINITIONS

- 2.1 **"Alcohol"** means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- 2.2 **"Alcohol Use"** means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

RESOLUTION NO. 77 OF 2020

PAGE 7 OF 20

- 2.3 **"Clearinghouse"** means the online database maintained by the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation which contains information about drug and alcohol program violations for drivers who are licensed to operate commercial vehicles.
- 2.4 For purposes of this policy, **"Commercial Motor Vehicle"** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
- a. has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) including a towed unit with a gross vehicle weight of more than 4,536 kilograms (10,000 pounds); or
 - b. has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or
 - c. Is designed to transport 16 or more passengers, including the driver; or
 - d. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).
- 2.5 **"Controlled Substances" and "Drugs"** are used interchangeably in this policy and mean marijuana, cocaine, opioids including semi-synthetic opioids, amphetamines, phencyclidine (PCP), or their metabolites, and any other substance included in Schedules I through V, as defined by the Controlled Substances Act, 21 U.S.C. §812, as they may be revised from time to time. The terms "controlled substances" and "drugs" include legal substances obtained illegally or used in an unauthorized manner, but do not refer to the proper use of controlled substances authorized by law which do not affect job safety or performance.
- 2.6 **"Disabling Damage"** means damage which prevents a motor vehicle from being driven from the scene of the accident in its usual manner in daylight after simple repairs, including damage to motor vehicles that could have been driven, but would have been further damaged if driven. This term **does not include** damage which can be remedied temporarily at the scene of the accident without special tools or parts; tire disablement without other damage even if no spare tire is available; headlight or taillight damage; or damage to turn signals, horn or windshield wipers which make them inoperative.
- 2.7 **"Driver"** means any person who operates a "commercial motor vehicle" (as defined in Section 2.3.) Under FMCSA regulations, this includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers.
- 2.8 **"Performing A Safety-Sensitive Function"** means any period in which a driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
- 2.9 **"Query"** a search of an individual driver's information contained in the Clearinghouse. A query can be a **"limited query"** which indicates only that there is information about a drug or alcohol program violation in the Clearinghouse, or a **"full query"** which includes the details of the driver's drug or alcohol program violation(s) and whether that driver is cleared to return to duty.
- 2.10 **"Safety-Sensitive Function"** means the following activities and includes 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:

- a. All time at a County facility, terminal, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the County;
- b. All time inspecting equipment as required by the FMCSA's regulations 49 C.F.R. §§392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- c. All time spent at the driving controls of a commercial motor vehicle in operation;
- d. All time, other than driving time, in or upon any commercial motor vehicle, except time spent resting in a sleeper berth (a berth conforming to the requirements of the FMCSA's regulation 49 C.F.R. §393.76);
- e. 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
- f. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

2.11 **"Substance Abuse Professional" ("SAP")** means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol And Other Drug Abuse). All SAPs must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

3.0 PROHIBITED CONDUCT

3.1 Prohibited Conduct Concerning Driver's Use Of Drugs and Alcohol:

- a. Drivers are prohibited from reporting for duty or remaining on duty when using any drugs (as defined in Section 2.4), except when the use is pursuant to the instructions of a medical doctor who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle. (For details concerning the lawful use of prescription drugs, refer to Section 3.4.)
- b. Drivers are prohibited from reporting for duty or remaining on duty with an alcohol concentration of 0.04 or greater. Drivers found to have an alcohol concentration of 0.02 or greater, but less than 0.04, are prohibited from performing any safety-sensitive functions for at least 24 hours from the test.
- c. Drivers are prohibited from using alcohol in any form (***including medications containing alcohol***) while performing safety-sensitive functions (refer to Section 2.7 of this policy for the definition of performing safety-sensitive functions).
- d. Drivers are prohibited from performing safety-sensitive functions within four (4) hours after using alcohol. On-call employees who are not at work, but could be called to drive or perform other safety-sensitive functions, are subject to this pre-duty alcohol prohibition. This means a driver who is on-call must decline a call to work if his or her acceptance would require the employee to drive or perform other safety-sensitive functions within four (4) hours after consuming alcohol. An on-call driver who is required to decline work because of his/her use of alcohol in violation of the four-hour rule is subject to discipline up to and including termination.
- e. Drivers are prohibited from using alcohol for eight (8) hours following an accident or until the driver takes a post-accident alcohol test (and tests negative), whichever

occurs first.

- f. Drivers may not “refuse to submit” to any drug or alcohol test required under the FMCSA’s drug and alcohol rules and/or this policy. (For further details concerning what actions will be considered as a “refusal,” refer to section 3.2 of the policy.)
- g. Drivers are prohibited from performing or continuing to perform a safety-sensitive function if they have tested positive for controlled substances or alcohol.
- h. Drivers may not refuse to submit to any inspection required under section 11.0 of this policy.
- i. During a driver’s workday, a driver is prohibited from engaging in the unlawful or unauthorized manufacture, distribution, dispensation, sale, purchase, solicitation, transfer, possession, use or transport of controlled substances or alcohol. This prohibition does not include the authorized distribution, dispensation, sale, purchase, solicitation, transfer, possession, use or transport of alcoholic beverages in connection with County-sponsored functions or events.
- j. Drivers are prohibited from failing to stay in contact with the County or its medical review officer while awaiting the results of a drug test.

3.2 Refusal to Submit: For purposes of this policy, the following employee conduct will be considered as a refusal to submit to a test:

- a. refusing to complete the chain-of-custody form or any other required drug or alcohol testing form(s);
- b. refusing to provide a urine sample, or breath or saliva specimen for testing;
- c. failing to provide an adequate amount of urine or breath for testing, without a valid medical explanation;
- d. failing to promptly notify the County that the driver was in an accident or not being readily available for testing after an accident (except as necessary to obtain assistance or medical care);
- e. refusing or failing to report directly to the collection site after being notified of the need to submit to a test;
- f. delaying the collection, testing or verification process;
- g. adulterating or substituting a urine sample or attempting to adulterate or substitute a urine sample; or
- h. otherwise engaging in conduct that clearly obstructs the testing process.

3.3 Consumption of Food or Food-Products Containing Hemp: The consumption of food and food-products containing hemp (for example, “Seedy Sweeties” and hemp oil) may cause a driver to test positive for marijuana. A test result that is positive as a result of a driver’s consumption of food or food-products containing hemp will be reported as a positive test. (Refer to Section 7.3 regarding the consequences of a positive test result.)

3.4 Prohibition On Supervisor Or Manager Permitting A Driver To Work: No supervisor or manager who has actual knowledge that an employee has engaged in or is engaging in conduct prohibited under this policy shall permit the employee to work or continue working under such circumstances. Any employee who has been directed not to work or directed to stop working under such circumstances must immediately comply.

3.5 Prohibition Against Working While Using Any Drug Medications Can Which Affect Safety Or Performance:

- a. Except as otherwise provided in this section, the lawful use of any medication (therapeutic drugs) while performing a safety-sensitive function is prohibited to the extent such use may affect the driver’s ability to perform his/her job duties safely.

RESOLUTION NO. 77 OF 2020

PAGE 10 OF 20

- b. A driver who will use, or who is using, any medication that contains a controlled substance has an obligation to inquire and determine whether the medication the driver is using or may use could affect the driver's ability to perform his/her job duties safely.
- c. If the driver is or will be using any such drug medication, the driver is required to obtain from the driver's licensed medical practitioner a written statement which provides that the medication will not interfere with the driver's ability to safely and efficiently perform the driver's job duties or provides the work restrictions, if any, which the driver is subject to for the period of time the driver is taking the medication. The County's "Certification of Driver's Authorized Use of Prescription and/or Non-Prescription Medication" form is to be used for this purpose.
- d. In the event a driver is using or will be using drug medication which will interfere with or adversely affect the driver's ability to do his or her job duties, such information must be reported to the driver's immediate supervisor prior to commencing any safety-sensitive functions, without disclosing the identity of the substance. The driver must also have the medication available for review by the County's MRO in its original container, which must identify the medication dosage and other pertinent information about the medication.
- e. A driver may continue to work, if the County's MRO and the licensed medical practitioner have determined that the medication will not adversely affect the driver's ability to safely and efficiently perform the driver's safety-sensitive functions, or they have determined that a reasonable accommodation can be made concerning the driver's medication. A driver will not be permitted to perform his or her safety-sensitive functions unless such a determination or reasonable accommodation has been made.

4.0 REQUIRED TESTS AND PAST TEST RESULTS INFORMATION

As required by the FMCSA's regulations, the County will conduct drug and alcohol tests and Clearinghouse queries under the conditions and circumstances described below.

4.1 The FMCSA Clearinghouse

- a. Existing Employees: Under FMCSA rules the County will conduct the following searches of the Clearinghouse:
 - 1. A limited query of every driver once during the calendar year. All drivers shall sign a consent form granting the County permission to perform a query of the Clearinghouse once during each calendar year. The consent so given shall be valid for as long as the driver is employed by the County. If the results of a Clearinghouse query show that there are no records in the Clearinghouse for that driver, then no other action is necessary.
 - 2. A full query. If the results of a Clearinghouse limited query indicate that a driver has a record in the Clearinghouse, then the County will conduct a full query of the Clearinghouse to obtain the details of that violation. Each individual driver for whom the County will conduct a full query will give permission to the County by signing into the Clearinghouse online and give permission electronically.
 - 3. **Refusal to Consent.**
 - a. **Automatic Removal From Safety-Sensitive Functions:** FMCSA regulations mandate that drivers who refuse to give consent to the County to perform either a limited query or a full query be immediately removed from, and prohibited from performing, safety-sensitive functions. Safety-sensitive functions include driving,

repairing, inspecting, loading, and unloading commercial motor vehicles as defined in section 2.3 of this policy.

- b. Any driver who refuses to give consent to the County to conduct a Clearinghouse query will be terminated.
- b. Applicants: Each person applying for employment with the County as a driver or who holds a commercial driver's license shall grant permission to the County to perform a full query in the Clearinghouse by signing into the Clearinghouse online and give permission electronically.

Any applicant who refuses to give consent to the County to conduct a Clearinghouse query will be ineligible for employment with the County.

4.2 Pre-Employment Drug Testing and Past Test Results Information:

- a. All applicants who have received a conditional offer of employment in a CMV driver position, and all existing employees whose transfer to a CMV position has been conditionally approved, are required to submit to a pre-employment drug test and must receive a negative test result as a condition of employment. Such tests will be conducted prior to the time the applicant is hired or transferred.
- b. In addition to a pre-employment drug test, FMCSA's regulations require the County to obtain the following specific information concerning an applicant's past drug and alcohol tests from an applicant's former motor carrier employers during the previous two years: (i) alcohol tests with results of 0.04 or greater; (ii) drug tests whose results were verified positive; and (iii) all instances in which the applicant refused to be drug or alcohol tested. All such information will be obtained in a confidential manner and the County will maintain a written confidential record with respect to each former carrier contacted. The information obtained from a previous carrier may contain alcohol and drug information which that carrier obtained on or after January 1, 1995 from another previous motor carrier employer.
 - 1. Although FMCSA regulations only require the County to go back two years, FMCSA requires information regarding positive test results to be maintained for 5 years. Therefore, the County has elected to request past test results for the previous 5 years. As a condition of employment with the County, applicants for CMV driver positions are required to complete and sign the County's "Applicant's Authorization to Obtain Past Drug and Alcohol Test Results" form, which authorizes the applicant's former motor carriers for whom the applicant drove during the preceding five years (from the date of application) to release to the County information concerning the applicant's: (i) alcohol tests with results of 0.04 or greater; (ii) drug tests whose results were verified positive; and (iii) all instances in which the applicant refused to be drug or alcohol tested.
- c. If the County learns from the driver's previous carriers that the driver had an alcohol test result of 0.04 or greater, a verified positive drug test, or refused to be tested, the driver either will be ineligible to drive for the County, or if hired, the driver will be terminated, unless the County obtains evidence that the driver has complied with the referral and rehabilitation requirements set forth in §382.605 of FMCSA's regulations.

4.3 Post-Accident Drug And Alcohol Testing:

- a. A driver who is performing safety-sensitive functions (as defined in Section 2.8 of this policy) involving a commercial motor vehicle is required to submit to a post-accident drug and/or alcohol test as soon as practicable following the accident,

under the following circumstances:

1. **Fatal accidents:** A driver who is involved in an accident which results in a death to another human being must always submit to a drug and alcohol test.
2. **Non-fatal accidents:** A driver who is involved in a non-fatal accident, must submit to a post-accident drug and alcohol test if:
 - (a) the driver was given a citation for a moving traffic violation involving the accident **and**
 - (b) the accident also results in one of the following:
 - (1) bodily injury to the driver or another individual, requiring immediate medical treatment away from the scene of accident; or
 - (2) one or more of the vehicles involved in the accident incurs disabling damage (as defined in Section 2.5 of the policy), requiring the vehicle(s) to be transported away from the scene by a tow truck or other vehicle.
- b. Drivers involved in any accident involving their vehicle must notify the Program Administrator as soon as possible to obtain information on how to proceed with the required testing. Drivers are obligated to follow the Program Administrator's instructions and, if directed to submit to post-accident drug and alcohol tests, must do so as soon as possible.
- c. A driver who is subject to post-accident testing must remain readily available for such testing or else will be deemed to have refused to submit to such testing. However, this "readily available" requirement does not require the delay of necessary medical attention for injured people, or prohibit a driver from leaving the scene of the accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
- d. A driver who is required to submit to a post-accident test will be suspended after completion of the drug and/or alcohol tests. The County also reserves the right to evaluate the conduct of the driver which may have caused or contributed to the accident, to determine if this conduct in and of itself should warrant discipline, up to and including termination.

4.4 Random Drug And Alcohol Testing:

- a. Each year the County will administer random alcohol and drug tests. Random *drug* tests may be conducted at any time. Random *alcohol* tests will only be conducted while a driver is performing safety-sensitive functions, just before the driver performs safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.
- b. The County shall select drivers for testing using a random number table or a computer-based random number generator that is matched with the drivers' social security numbers, or other comparable identification numbers which will ensure that each driver has an equal chance of being tested each time selections are made.
- c. All random tests will be unannounced and the dates for administering the tests will be spread reasonably throughout the calendar year. The dates of random testing, locations and names of those to be tested are kept in the strictest confidence by the Program Administrator and the specimen collector.
- d. Each driver who is notified of selection for random drug or alcohol testing must proceed to the test site immediately. If the driver is performing a safety-sensitive function (refer to section 2.8) at the time of notification, the driver must cease performing the safety-sensitive function and proceed to the test site as soon as possible, but not longer than two hours from the time of notification. Drivers who

do not proceed to the test site immediately upon notification of the test may be considered to have refused to submit to the test.

4.5 Reasonable Suspicion Drug and/or Alcohol Testing:

- a. A driver must submit to a reasonable suspicion drug and/or alcohol test whenever a manager or supervisor has reasonable suspicion to believe that the driver has violated the drug or alcohol prohibitions contained in this policy. Reasonable suspicion drug tests may be conducted at any time. Reasonable suspicion alcohol tests may be conducted only while the driver is performing safety-sensitive functions, just before the driver performs safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.
- b. Reasonable suspicion determinations will be based on specific, contemporaneous, articulable observations concerning the driver, including but not limited to, the driver's appearance, behavior, speech, or body odors. For drug testing, the observations may also include indications of the chronic and withdrawal effects of drugs.
- c. Documentation of the observations leading to a reasonable suspicion test will be prepared and signed by the supervisor or manager who made the observations. The supervisors and managers who will make reasonable suspicion determinations have received training on alcohol misuse and controlled substances use in accordance with the FMCSA's regulations. The particular supervisor or manager who makes a reasonable suspicion determination will not conduct the drug or alcohol test.
- d. A driver who is directed to take a reasonable suspicion drug and/or alcohol testing must submit to the test as directed. The County shall transport or ensure transport of the driver both to and from the collection site.
- e. A driver who is requested to submit to a reasonable suspicion drug and/or alcohol test will be suspended after the completion of the tests. The County also reserves the right to evaluate the conduct of the driver which warranted the reasonable suspicion drug or alcohol tests to determine if the conduct in and of itself should warrant discipline, up to and including termination.

5.0 SELF-IDENTIFICATION OF SUBSTANCE ABUSE PROBLEM

- 5.1 Consistent with and subject to the County's policies concerning medical and personal leaves and vacations, a driver who voluntarily self-identifies himself or herself as having a drug or alcohol problem and requests assistance for such a problem will be referred to a substance abuse professional for an evaluation and, if recommended, an appropriate counseling, treatment or rehabilitation program. The cost of the counseling, treatment or rehabilitation is the driver's responsibility. (For further details concerning the employee's payment obligations, employees should refer to their medical insurance plan.)
- 5.2 **This request must be made before the driver is directed or otherwise required to submit to a drug or alcohol test required by DOT or this policy.**
- 5.3 Once leave commences, periodic certification that the employee is actively continuing to participate in the program, together with progress reports, shall also be required. As a further condition of taking such leave, the employee will be required to authorize the attending substance abuse professional to communicate directly with the County, including to release the employee's relevant treatment records to the County, except as federal or state law may otherwise require. All such oral and written communications between the substance abuse professional and County shall be treated as confidential.

- 5.4 Except where the federal or state law prohibits, all leave time taken for the evaluation, counseling, treatment or rehabilitation will be counted against the leave to which the employee may be entitled under the federal or state Family and Medical Leave laws.
- 5.5 Prior to the time such leave begins, the driver will be required to execute the County's "Agreement for Treatment and Conditions for Continued Employment." This agreement provides, among other things, that before a driver will be permitted to return to his/her driving duties or perform other safety-sensitive functions for the County, the driver will be required to submit to post-voluntary rehabilitation return-to-duty drug test test and/or post-voluntary rehabilitation return-to-duty alcohol and must receive a negative result. The agreement also provides that the driver may be required to submit to post-voluntary rehabilitation follow-up drug tests and/or post-voluntary rehabilitation follow-up alcohol tests after returning to work, if directed by the treating substance abuse professional. Any return-to-duty and follow-up drug and/or alcohol tests performed under this section of the policy will be conducted as permitted by and in accordance with the applicable state or local law, if any. Where there is no applicable state or local law, or where such laws do not provide specific detailed procedures governing such testing, the County will follow the Federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 C.F.R. Part 40, as amended.

6.0 DRUG AND ALCOHOL TESTING PROCEDURES

As required by the FMCSA's rules, the County's drug and alcohol testing procedures comply with the Federal Procedures For Transportation Workplace Drug and Alcohol Testing Programs, 49 C.F.R. Part 40, as amended. (A copy may be obtained from the Program Administrator). These procedures ensure the integrity, confidentiality and reliability of the testing processes, safeguard the validity of the test results and ensure that these results are attributed to the correct driver. Further, these procedures minimize the impact upon the privacy and dignity of persons undergoing such tests. The following provides a summary of the federal procedures.

6.1 Drug Testing Procedures:

- 6.1.1 a. **Drugs being tested for:** The drugs that may be tested for include: marijuana, opioids including semi-synthetic opioids, amphetamines and amphetamine variants, cocaine, phencyclidine (PCP) and their metabolites, and certain painkilling medications.
- b. **Chain-of-custody and laboratory:** For purposes of conducting drug tests, the County has established a chain-of-custody procedure for the collection and analysis of urine samples that will verify the identity of each sample and test result. All drug tests conducted pursuant to this policy shall be performed by laboratories which are certified by the Department of Health and Human Services ("DHHS")
- c. **Confirmation and review of drug test results:**
 - 1. All positive drug test results will be confirmed by gas chromatography and mass spectrometry (GC/MS). All confirmed positive drug test results will be reviewed by a medical review officer ("MRO") to determine whether there is any legitimate explanation for the positive test result. This review may include a medical interview, review of the applicant's or driver's medical history, or review of any other relevant biomedical factors and all medical records made available by the tested individuals.
 - 2. Individuals testing positive will be given the opportunity to discuss with the MRO any legitimate explanation for the positive test result. If, after

RESOLUTION NO. 77 OF 2020

PAGE 15 OF 20

speaking with the driver, the MRO determines that there is a legitimate medical explanation for the confirmed positive test result, the MRO will report the test result as “negative” to the Program Administrator or a designated representative. If the MRO determines that there is no legitimate explanation for the confirmed positive test result, the result will be verified as a “confirmed positive test result” by the MRO.

3. Under the circumstances set forth in 49 C.F.R. Part 40, the MRO is permitted to verify a test result as a confirmed positive without having first communicated directly with the driver. In the event that serious illness, injury or other unavoidable circumstances prevented the driver from being contacted by the MRO or a designed County representative, however, the MRO may reopen the verification process to permit the driver to provide information concerning a legitimate explanation for the positive test. (Refer to Section 3.1.j. of the policy concerning the driver’s duty to remain in contact with the County and MRO.)
- d. **Right to have split-sample analyzed:** All applicants and drivers whose primary urine sample is verified positive have the right to request that their split-sample be analyzed in a different DHHS certified laboratory, selected by the County, for the presence of the drug(s) for which a positive result was obtained. The request must be made to the MRO within 72 hours of being notified by the MRO of a verified positive test result. If the split-sample fails to reconfirm the presence of the drug(s) found in the primary sample, or if the split-sample is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the cancellation and the reasons for it to the Program Administrator or a designated representative and the tested individual. However, if the split-sample reconfirms the presence of the drug(s) or drug metabolite(s), the MRO will notify the Program Administrator or a designated representative and the tested individual of the test results.
- e. **Inability to provide adequate amount of urine sample:** Applicants and drivers must provide a urine sample of at least 45 milliliters of urine for a drug test. If the tested individual is unable to provide such a quantity of urine, then the tested individual will be instructed to drink a set amount of fluids and after a set period of time, again attempt to provide a complete sample. If an applicant refuses to drink the fluids as directed, or to provide a new urine sample, this will constitute a refusal to submit to a test and the applicant will be ineligible for employment with the County. If a driver refuses to drink the fluids as directed or to provide a new urine sample, this will constitute a refusal to submit to testing and the driver will be terminated. If a driver has not provided a sufficient sample within a certain time period after the first unsuccessful attempt to provide the sample, the County will direct the driver to obtain as soon as possible, a medical evaluation from a physician selected by the County. If the physician determines that there is no legitimate medical explanation for the driver’s failure to provide an adequate amount of urine, this will constitute a refusal to submit to a test and the driver will be terminated.
- f. **Altered or substituted urine samples:** Procedures for collecting urine samples allow an individual privacy unless there is a reason to believe that a particular individual has altered or substituted, or attempted to alter or substitute, the sample, as defined in the Federal Procedures For Transportation Workplace Drug Testing Programs, 49 C.F.R. Part 40. In such cases, a sample may be obtained under the direct observation of a specimen collector of the same gender as the individual being tested.
- g. **Dilute Specimens:** In the event the county receives a dilute positive specimen,

then the test shall be accepted as a positive test. In the event that the county receives a negative dilute specimen, the county shall require a retest to be conducted in each of the following cases: return to duty tests, follow-up tests, reasonable suspicion tests, and random tests. The result of the retest shall become the test of record. If the employee refuses to take the retest it will be considered the same as a positive test result.

6.2 Alcohol Testing Procedures:

- a. **How test will be performed:** Alcohol screening tests will be performed by a screening test technician ("STT") using a non-evidential screening device, or by a breath alcohol technician ("BAT") using an evidential breath testing device ("EBT"). The County ensures that the STTs are proficient in the operation of non-evidential screening devices and that the BATs are proficient in the operation of EBTs. In addition, the County use only non-evidential alcohol screening devices and EBTs which are listed on the conforming products list issued by the National Highway Traffic Safety Administration.
- b. **Confirmation of alcohol test results:** If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test will be performed using an EBT. The confirmation test will be conducted within 30 minutes from the end of the screening test. The confirmation test result is the final result upon which any discipline or other action taken under the County's policy shall be based.
- c. **Inability to provide adequate amount of specimen for alcohol testing:**
 1. If a driver fails to provide or claims that he or she is unable to provide a sufficient amount of breath to permit a valid breath test because of a medical condition, the County will require the driver to be evaluated by a physician selected by the County. If the physician determines that the driver's alleged medical condition could not preclude the driver from providing an adequate amount of breath, this will constitute a refusal to test and the driver will be terminated.
 2. If the driver is unable to provide sufficient saliva to complete a test on a saliva screening device, the STT shall conduct a new test, using a new device. If the driver refuses to complete the new test, this will constitute a refusal submit to a test and the driver will be terminated. If the new test is completed, but there is an insufficient amount of saliva to activate the device, the driver shall immediately take an alcohol test using an EBT. If the driver refuses to submit to the test using an EBT, the driver will be terminated.

7.0 CONSEQUENCES FOR POLICY VIOLATIONS

The consequences discussed below apply to applicants and drivers who are found to have violated this policy. Regardless of the discipline imposed, however, FMCSA's regulations require drivers who engage in any prohibited conduct under this policy to be advised of available resources for evaluating and resolving problems associated with drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. This information will be provided through the County's Human Resource Department.

- 7.1 Automatic Removal From Safety-Sensitive Functions:** FMCSA's regulations require drivers who violate this policy in any way to be immediately removed from their safety-sensitive functions. Such drivers are prohibited from performing, or being permitted to

RESOLUTION NO. 77 OF 2020

PAGE 17 OF 20

perform, a safety-sensitive function, including driving County trucks and motor vehicles with gross vehicle weight ratings between 10,001 and 26,000 pounds or which weigh 10,001 or more pounds when loaded (regardless of the vehicle's gross vehicle weight rating).

7.2 **Refusal To Submit:** Any driver who refuses to submit to a test will be terminated. Applicants who refuse to submit to a test will be ineligible for employment with the County. Refer to section 3.2 concerning what actions will constitute a driver's "refusal to submit."

7.3 **Positive Test Results:**

a. **Applicants:** All applicants who receive a verified confirmed positive drug test result will be ineligible for employment with the County.

b. **Drivers:**

1. **Temporary suspension:** Any driver who is required to submit to a reasonable suspicion or post-accident drug or alcohol test pursuant to this policy will be temporarily suspended.

2. **Confirmed positive drug test and alcohol test results of 0.04 or greater:** If a driver receives a confirmed positive drug test or an alcohol test result of 0.04 or greater, for the first time, the driver will be terminated from employment.

3. **Positive alcohol test results of 0.02 or greater but less than 0.04:** A driver who receives a confirmed alcohol test result of 0.02 or greater, but less than 0.04, **for the first time**, will be suspended for at least 24 hours. A driver who receives a confirmed positive alcohol test result of 0.02 or greater **for a second time** will be terminated.

4. **Fitness-for-duty evaluation in the event of driver's legal and authorized use of a controlled substance:** Whenever an employee is required to submit to a reasonable suspicion drug test and receives a positive test result caused by the employee's legal and authorized use of a controlled substance, the County will require the employee to submit to a fitness-for-duty evaluation. An employee who tests negative may also be required to submit to a fitness-for-duty evaluation. The evaluation may include a review of the employee's medical records and/or a medical examination. The purpose of the evaluation is to determine whether the employee poses a significant risk of substantial harm to the health and safety of the employee or others in the workplace, including customers and visitors. Employees will be required to provide the necessary authorizations for obtaining the medical records and conducting the examination. Depending upon the results of the evaluation, the County will consider whether the safety or health risk can be eliminated or sufficiently reduced by a reasonable accommodation, if applicable.

7.4 **Other Policy Violations:** Drivers who commit policy violations other than those addressed in Sections 7.2 and 7.3 above will be subject to discipline, up to and including, immediate termination. Applicants who violate this policy will be ineligible for employment with the County.

7.5 **Potential Forfeiture of Workers' Compensation and/or Unemployment Compensation Benefits:** For purposes of this policy, violations of FMCSA's regulations and/or the requirements of this policy constitute gross and willful misconduct. In addition to the discipline and other consequences imposed by FMCSA and the County under this policy, such gross and willful misconduct may also result in the denial of unemployment

compensation under the applicable state law. In addition, drivers who are injured as a result of a violation of FMCSA's regulations and/or the County's safety rules (including but not limited to the conduct prohibited under this policy) may also forfeit workers' compensation benefits under the applicable state law.

8.0 NOTIFICATION OF TEST RESULTS

Applicants will be notified of the results of a pre-employment drug test, if the applicant requests his/her test results within 60 days of being notified of the disposition of the employment application. Drivers will be advised of drug test results which are verified positive and the drug or drug(s) for which a positive result was verified. Drivers will be notified of the results of their alcohol tests immediately after the administration of the screening test and, if necessary, the confirmatory test.

9.0 TESTING EXPENSES AND COMPENSATION FOR TESTS

The County will pay for drug and alcohol tests and related expenses as follows:

- 9.1 All drug and alcohol tests required to be taken by drivers or applicants under this policy, including confirmation tests will be paid for by the County. The County will also pay for the analysis of the driver's split-sample. Any test taken at a driver's request will be at the driver's expense, unless the result of the test is negative. Applicants will be required to pay for split-sample tests in all locations, but will be reimbursed by the County if the result is negative. The County will also pay for the cost of the driver's transportation to the test site, if the test is conducted at a place other than the driver's normal work site.
- 9.2 All time spent by drivers providing a specimen required under this policy, including travel time to and from the collection site, will be considered as on-duty time. The driver will receive his or her regular compensation, including overtime, if applicable for such time.

10.0 RECORDKEEPING, ACCESS TO RECORDS AND CONFIDENTIALITY OF TEST RESULTS

- 10.1 The County will maintain records related to its drug and alcohol testing program as required by the FMCSA's regulations. These records will be maintained in a secure location with controlled access and will not be released to any person except as required by law or expressly authorized by the driver.
- 10.2 The laboratory may disclose drug test results only to the MRO. The MRO, STT and BAT may disclose test results only to the individual tested, designated County representatives, a treatment program, or a court of law or administrative tribunal to the extent required by law. Beyond that, a driver's test results shall not be released to any person without the individual's written consent.

11.0 INSPECTIONS

- 11.1 **Inspections Of County Property:** The County may conduct unannounced random inspections for drugs and alcohol on County facilities and property such as, but not limited to, County vehicles, desks, file cabinets, and County-issued employee lockers. Drivers are expected to cooperate in the conduct of such inspections. Inspections of County facilities and property may be conducted at any time and need not be based on reasonable suspicion.

11.2 **Inspections Of Driver Property:** Inspections of drivers and their personal property such as, but not limited to, vehicles, clothing, packages, purses, brief cases, lunch boxes, or other containers brought onto or being taken off of County premises may be conducted when there is reasonable suspicion to believe that the driver may have or has violated the drug or alcohol prohibitions contained in this policy.

12.0 EMPLOYEE ASSISTANCE PROGRAM (“EAP”)

As part of the County’s commitment to provide a safe, healthy and efficient working environment for our employees, the County maintains an Employee Assistance Program (“EAP”). The EAP provides information concerning the effects and consequences of alcohol and drug use on an individual’s health, work, and personal life and the signs and symptoms of an alcohol or drug problem. In addition, the EAP provides referral services to drivers and their families seeking help with problems resulting from alcohol misuse and drug use. Participation in this program is voluntary and confidential. The EAP can discuss available counseling, treatment and rehabilitation programs, fiscal responsibilities, and can help the employee decide what program might be best for his or her situation. For further information, call the Human Resources Department.

13.0 SUBSTANCE ABUSE POLICY FOR WARREN COUNTY EMPLOYMENT APPLICANTS

The applicants policy applies to applicants for all positions with the County that if hired would be covered by the Warren County Alcohol & Drug Testing Policy Commercial Driver License Policy above. Questions regarding the meaning or application of this section of the policy should be directed to the Human Resources Department.

This policy is not a contract of employment. If an applicant fails to comply with this policy, the applicant will be ineligible for employment.

FMCSA Clearinghouse

Each person applying for employment with the County as a driver or who holds a commercial driver’s license shall grant permission to the County to perform a full query in the Clearinghouse by signing into the Clearinghouse online and giving permission electronically.

Any applicant who refuses to give consent to the County to conduct a Clearinghouse query will be ineligible for employment with the County.

Required Pre-employment Drug Testing of all Applicants

All applicants to whom the County has given a conditional offer of employment may be required to submit to a pre-employment drug test and must receive a negative result as a condition of employment.

Testing Procedures

The County’s pre-employment drug testing procedures comply with applicable state and local law. Except as otherwise may be required or permitted by the applicable state or local law, the County’s pre-employment drug test procedures will follow the Federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40, in effect on January 18, 2001 and in accordance with revisions to take effect on August 1, 2001 (with the exception of the provisions pertaining to Public Interest Exclusions and related provisions). The County’s procedures ensure the integrity, confidentiality and reliability of the testing process, safeguard the validity of the test results and ensure that test results are attributed to the correct individual. These procedures are also intended to minimize the impact upon the privacy and dignity of employees being tested. A copy of the federal procedures and any applicable state law is available for review through the

Human Resources Manager.

Consequences for Policy Violations

Positive Test Results: Any applicant who receives a confirmed positive drug test result will be ineligible for employment with the County.

Refusal to Submit: Any applicant who refuses to submit to a test will be ineligible for employment with the County. The following conduct will be considered as refusing to submit to a test:

1. Refusing to provide a urine sample or failing to provide an adequate amount of urine without a legitimate medical explanation.
2. Failing to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the County as part of the “shy bladder” procedures.
3. Refusing to complete the chain-of-custody or another form whose completion is required and necessary to conduct the test.
4. Refusing or failing to report promptly to the site where the drug test will be conducted after the applicant is notified that he or she must submit to the test.
5. Failing or declining to take a second drug test that the County or collector has directed to be taken.
6. Failing to cooperate with any part of the testing process, such as by delaying the collection, testing or verification process.
7. Adulterating or substituting a urine sample or attempting to adulterate or substitute a sample.
8. Otherwise engaging in conduct that clearly obstructs or manipulates, or attempts to obstruct or manipulate, the testing process.

Consumption of Food or Food-Products Containing Hemp: The consumption of food and food-products containing hemp may cause an applicant to test positive. A test result that is positive as a result of an applicant’s consumption of food or food-products containing or made from hemp or hemp products will be reported as a positive test.