

WAUPACA COUNTY GENERAL CODE OF ORDINANCES
CHAPTER 46
DOT Substance Abuse Policy

September 16, 2008

INTRODUCTION	4
Statement of Purpose	4
Mandated Applicability	4
Designated Employer Representative (DER)	5
EMPLOYER RESPONSIBILITY	5
Release from Liability	5
Release of Information, Confidentiality, and Access	5
Educational Materials	5
DRIVER RESPONSIBILITIES	6
Alcohol Concentration	6
On-Duty Use of Alcohol	6
Pre-Duty Use of Alcohol	6
Alcohol Use Following an Accident	6
Alcohol Testing	7
Controlled Substance Use	7
Controlled Substance Testing	7
Refusal to Submit to a Required Alcohol or Controlled Substance Test ...	7
CONSEQUENCES	8
Non-Negative Result	8
SUBSTANCE ABUSE RELATED TRAFFIC OFFENSES AND CONSEQUENCES	9
SERVICE AGENTS	9
Collection Site	10
TEST EVENTS	10
Pre-Employment/Pre-Duty Testing	11
Post-Accident Testing	12
Random Testing	13
Reasonable Suspicion Testing	13
DRUG TESTING PROCESS	14
Initial Test	14
Confirmation Test	14
Cutoff Concentrations for Initial and Confirmation Tests	15

Written Reports	16
Negatives	16
Non-Negatives	16
Split-Specimen Testing.....	17
Cancelled Tests	17
Dilute Specimens	18
Shy Bladder	18
Shy Lung	19
Direct Observation and Monitored Collections	19
RECORD RETENTION.....	19
ACKNOWLEDGEMENT OF RECEIPT	21

INTRODUCTION

Statement of Purpose

Waupaca County, hereafter referred to as “Waupaca County”, has developed this Substance Abuse Policy in accordance with the rule requirements for substance abuse testing set forth by the Department of Transportation (DOT) Subtitles A and B of the *Code of Federal Regulations* Title 49. The bulk of the rule comes from 49 CFR Parts 40 and 382. The rule became fully effective on August 1, 2001: all guidance and interpretations issued prior to this date are now invalid. The DOT Office of Drug and Alcohol Policy and Compliance, and the DOT Office of General Council, are the only bodies authorized to provide official interpretations of the rule.

This DOT policy is not a new policy, but a revision/update of the previous one dated May 19, 1998.

Mandated Applicability

The DOT rule applies, for the purpose of this policy, **to anyone** within Waupaca County **that operates a commercial motor vehicle (CMV) as defined in 49 CFR §383.5/382.107, and who performs safety-sensitive functions.**

- ❑ **Commercial driver's license (CDL)** means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR [Part 383](#) , to an individual which authorizes the individual to operate a class of a commercial motor vehicle.
- ❑ **Commercial motor vehicle (CMV)** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - Has a gross vehicle combination weight rating (GVCWR) of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or
 - Has a gross vehicle weight rating (GVWR) of 11,794 or more kilograms (26,001 pounds or more); or
 - Is designed to transport 16 or more passengers, including the driver; or
 - Is of any size and is used in the transportation of placardable hazardous materials.
- ❑ **A safety-sensitive function is:**
 - All time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work;
 - All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
 - All time inspecting equipment as required by §§392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
 - All time spent at the driving controls of a commercial motor vehicle in operation;
 - All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
 - 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*

- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Designated Employer Representative (DER)

Waupaca County Personnel Specialist, is the primary designated employer representative (DER) to answer all questions regarding this policy and educational materials. The Personnel Specialist may be reached at (715) 258-6210. Waupaca County Personnel Director, is the secondary DER and may act in lieu of the Personnel Specialists. They may be reached at (715) 258-6211

Each driver must review this policy, clarify all questions and/or concerns with a DER, and sign an *Acknowledgement of Receipt* form, which indicates that the driver has received this substance abuse policy.

EMPLOYER RESPONSIBILITY

Release from Liability

Waupaca County will not require a driver to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process; *and*

Waupaca County has notified its service agents that they also may not require a driver to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process.

Release of Information, Confidentiality, and Access

Confidentiality is critical to the DOT drug and alcohol program. A Driver is entitled, upon written request, to obtain copies of any records pertaining to his/her use of alcohol or controlled substances, including any records pertaining to his/her alcohol or controlled substances tests. Waupaca County will permit access to facilities and records pursuant to §382.205 including access to all facilities utilized in complying with the requirements of the DOT rule to the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over Waupaca County or any of its drivers.

Educational Materials

Waupaca County will:

- Provide a copy of this policy that explains the requirements of the DOT rule to all applicable employees;
- Provide training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use;
- Provide to supervisors and other company officers (authorized by Waupaca County to make reasonable suspicion determinations) a minimum of sixty minutes of training on the physical, behavioral, speech, and performance indicators of probable drug use and sixty

minutes on the physical behavioral, speech, and performance indicators of probable alcohol misuse; *and*

- Require its drivers to sign a written Acknowledgement of Receipt form, which indicates that the driver has received a copy of this substance abuse policy and required education and has had the opportunity to ask questions about the requirements, and understands that all conditions within are also conditions of employment

DRIVER RESPONSIBILITIES

Waupaca County requires its DOT drivers to abide by the following prohibitions for drivers in safety-sensitive positions, as established and/or allowed by the DOT:

Alcohol Concentration

The DOT allows Waupaca County to remove a driver with a confirmed positive alcohol level of .02 - .039 BAC (inclusive) from the performing of safety-sensitive functions for a period of 24 hours without further penalty to the driver; **under its own authority however**, Waupaca County will remove a driver with a confirmed positive alcohol level of ≥ 0.02 BAC from the performing of safety-sensitive functions indefinitely; *and*

A driver with an alcohol concentration of ≥ 0.02 BAC is subject to the "Consequences" section of this policy.

On-Duty Use of Alcohol

A driver can not use alcohol or any beverage containing alcohol, while performing safety-sensitive functions; *and*

Waupaca County will not allow a driver to perform or continue to perform safety-sensitive functions with actual knowledge that he/she is using alcohol while performing such functions.

Pre-Duty Use of Alcohol

A driver cannot perform safety-sensitive functions within four hours after using alcohol;

Waupaca County will not allow a driver to perform or continue to perform safety-sensitive functions with actual knowledge that he/she has used alcohol within four hours prior to performing such functions.

When calling a driver in for duty outside of normal working hours, Waupaca County will ask the driver if he/she:

- Has consumed alcohol within the last four hours; *and*
- Is able to perform the required safety-sensitive functions (fit-for-duty).

Waupaca County will not allow a driver to perform safety-sensitive functions if he/she acknowledges the consumption of alcohol within the last four hours.

Alcohol Use Following an Accident

A Driver required to take a post-accident alcohol test under Part 40 can not use alcohol for eight hours following an accident, or until he/she undergoes a post-accident alcohol test, whichever

occurs first.

Alcohol Testing

Can be performed:

- while the driver is performing safety-sensitive functions;
- Just before the driver is to perform safety-sensitive functions; *or*
- Just after the driver has performed safety-sensitive functions.

Controlled Substance Use

A driver can not report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle;

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. The use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to an Waupaca County supervisor and the driver is required to provide a written release from his/her doctor or pharmacist indicating that the driver can perform his/her safety-sensitive functions:

- Each vial shall be in the driver's name;
- Each prescription must be current (not expired);
- Each vial must contain only one type of pills that are clearly specified by the dispensing agent on its label;
- Drivers must not possess medication in excess of the amounts designated by the prescription or consume more than therapeutically-prescribed doses;
- Waupaca County may require a driver to consent to allow the company to consult with the driver's personal physician or other medical practitioner to determine if such prescription drugs or medication produce hazardous effects that might restrict the driver's ability to perform his or her normal work activity, or which may pose a hazard to other drivers; *and/or*
- Waupaca County may reassign a driver to other work that would meet the restrictions placed by those medical practitioners until the use of the prescription drug has ended.

Controlled Substance Testing

A driver cannot report for duty, remain on duty, or perform a safety-sensitive function if he/she tests positive or has adulterated or substituted a test specimen for controlled substances.

Controlled substances testing may be performed at any time.

Refusal to Submit to a Required Alcohol or Controlled Substance Test

A driver cannot refuse to submit to any type of test required under Subpart C of Part 382.

It is considered a **refusal** when a driver:

- Fails to appear for any test (except pre-employment) within a reasonable time, as determined by Waupaca County, consistent with applicable DOT agency regulations, after being directed to do so;
- Fails to remain at the collection site until the testing process is complete, unless the

driver presents for a pre-employment test and has not begun the testing process; ○Fails to provide a urine specimen for any required drug test or an adequate amount of saliva or breath for any required alcohol test, unless the driver presents for a pre-employment test and has not begun the testing process;

- Fails to permit the observing or monitoring of the providing of a specimen when required;
- Fails to provide a sufficient amount of urine or breath specimen, and the physician has determined, through a required medical explanation, that there was no adequate medical explanation for the failure;
- Consumes alcohol within eight hours following involvement in an accident without first having submitted to post-accident drug/alcohol tests;
- Leaves the scene of an accident without a legitimate explanation prior to submitting to drug/alcohol testing;
- Fails or declines to take a second test that Waupaca County or the collector/BAT has directed him/her to take;
- Fails to undergo a medical examination or evaluation, as directed by the DER or MRO;
- Fails to sign the certification at Step 2 of the Alcohol Testing Form (ATF)
- Fails to cooperate with any part of the alcohol or controlled substances testing process;
- Provides or falsifies information in connection with testing or falsifies test results through tampering; *and/or*
- Is reported by the MRO as having a verified adulterated or substituted controlled substances test result.

CONSEQUENCES

Non-Negative Result

A non-negative result is any test disposition other than negative, i.e., positive, refusal, adulterated, or substituted.

A verified non-negative drug and or alcohol test will result in disciplinary action as specified herein:

Waupaca County will act on the initial report (usually a phone call), and not wait for the written report or the result of a split-specimen test;

As soon as practicable after receiving notice of a verified positive drug test result, **a confirmed positive alcohol test result of ≥ 0.02** , an adulterated or substituted specimen determination, or a test refusal, Waupaca County's DER will contact the driver's supervisor to have the driver cease performing job duties;

For the first instance of a verified non-negative test, disciplinary action against the driver shall include: Termination; *and* the DOT requires Waupaca County to provide a list of several Substance Abuse Professionals (SAP) to the driver.

NOTE: Before the driver may operate in a DOT-mandated safety-sensitive position with another employer, the driver must fully comply with the following per CFR 40 Subpart 0:

- Visit a SAP, who will evaluate the driver to determine what assistance the driver needs in resolving problems associated with prohibited drug use or alcohol misuse;
- The SAP will assist the driver in developing a "return-to-work in a safety-sensitive position" agreement, which the driver must fully comply with;
- Compliance with the return-to-work agreement means that the driver has:
- Submitted to a drug and/or alcohol test immediately prior to returning-to-work in a covered safety-sensitive position;
- The result of the test(s) is/are negative; in the judgment of the SAP the driver is

- cooperating with his/her SAP recommended treatment program; *and*
- The driver has agreed to periodic unannounced follow-up testing as defined by the regulations.

SUBSTANCE ABUSE RELATED TRAFFIC OFFENSES AND CONSEQUENCES

Waupaca County requires a driver to report – within thirty days of being convicted– crimes and/or convictions that affect the driver’s legal status to drive a commercial vehicle. Failure to report accordingly shall result in termination;

Each driver who is convicted of violating, in any type of motor vehicle, a state or local law relating to motor vehicle traffic control (other than a parking violation) in a state or jurisdiction other than the one which issued his/her license, shall notify an official designated by the state or jurisdiction which issued such license, of such conviction;

Notification must be made in writing and contain the following information:

- Driver’s full name;
- Driver’s license number;
- Date of conviction;

Each driver who has a driver’s license suspended, revoked, or canceled by a state or jurisdiction, who loses the right to operate a commercial motor vehicle in a state or jurisdiction for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify Waupaca County of such suspension, revocation, cancellation, lost privilege, or disqualification. The notification must be made before the end of the business day following the day the driver received notice of suspension, revocation, cancellation, lost privilege, or disqualification.

A driver obtaining, transferring, or renewing a CDL must disclose to the state driver licensing agency the state(s) where he/she previously held motor vehicle licenses, which enables the issuing agency to obtain the driver’s complete driving record.

SERVICE AGENTS

Waupaca County has a Service Agreement on file from each Service Agent, which states that the agent understands the public interest exclusion portion of 49 CFR Part 40; all of the responsibilities, qualification requirements, and certification requirements of a service agent therein; that it will perform all agreed-to services in accordance with 49 CFR Part 40; *and* that it will immediately notify Waupaca County’s DER of any errors or unusual circumstances. The agreement describes the services that the service agent will perform, and in some cases, the services that it will not perform.

Waupaca County has provided the contact information for its designated employer representative (DER) to each service agent, and has instructed the DER to establish a relationship with each service agent and its personnel in order for the DER to adequately identify each service agent representative he/she converses with. Waupaca County requires its DER to verify each service agents understanding and compliance with 49 CFR Part 40 on a quarterly basis.

Regardless of the agreements established between Waupaca County and its service agents, Waupaca County understands that it is responsible for ensuring that the service agents meet the qualifications set forth by the DOT rule; that it is responsible for compliance with all applicable requirements; that it is subject to sanctions should a service agent not comply with any part of the DOT rule; *and* that good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency as a result of service agent non-compliance.

Collection Site

49 CFR Part 40 for urine specimen collector qualification and training requirements (Subparts C, D, E, H, and I); breath and saliva alcohol testing certification and training requirements (Subparts J, K, L, M, and N); *and* collection site facility requirements (Subpart D).

Waupaca County has designated sites, and the Driver will be advised as to where to go for testing. The collection site will provide each driver with a set of donor instructions.

TEST EVENTS

Waupaca County affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be cancelled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

The DOT requires split-specimen testing for all test categories. The driver is responsible for payment of the split-specimen test should he/she elect to have the split-specimen tested and the result supports the original non-negative result; Waupaca County will pay for split-specimen testing when the result contradicts the original non-negative result.

All covered drivers are subject to urine controlled substances testing and breath alcohol testing as a condition of ongoing employment with Waupaca County. Any safety-sensitive driver who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in the "Consequences" section of this policy.

The DOT prescribes six different test categories, in each of which the urine specimens must be collected under split-specimen procedures:

	Controlled Substances	Alcohol
Pre-employment	Yes	No
Post-accident	Yes	Yes
Random	Yes (all)	Yes (some)
Reasonable Suspicion	Yes (Waupaca County discretion)	Yes (Waupaca County discretion)
Return-to-Duty	Termination 1st positive; does not apply	
Follow-up		

Waupaca County will notify a driver that a test is required;

Testing must not be delayed for any reason; should testing be delayed, the appropriate party should notify the DER immediately;

Waupaca County will not request additional testing beyond what is mandated in the DOT rule except for required medical tests related to a DOT physical examination when the specimen is collected as a part of the physical, i.e., a glucose test on the left-over urine of a urine specimen collected for controlled substances testing, after the specimens have been labeled and sealed;

Waupaca County will not change or disregard the results of DOT tests based on non-DOT test results; *and*

Waupaca County requires breath alcohol testing/urine collection personnel to use the Alcohol Testing Form (ATF) and the Federal Custody and Control Form (CCF) respectively for DOT mandated breath/saliva alcohol and urine controlled substances testing. Such forms may not be used for non-DOT testing.

Pre-Employment/Pre-Duty Testing

All offers of employment for covered positions are conditional upon the applicant passing a drug test with negative results;

Non-covered drivers who are placed, transferred, or promoted to a safety-sensitive position and who have a non-negative result are subject to disciplinary action under Waupaca County's non-DOT policy;

Cancelled tests require the taking and passing of another test;

Waupaca County requires drivers who are on a leave-of-absence for ninety days or more, during which time the driver has not performed safety-sensitive functions or been active in the random testing pool, to submit to a pre-employment test once again;

Prior to the first time a driver performs safety-sensitive functions for Waupaca County, whether as a new applicant or a transfer from a different position within the company, the driver shall undergo testing for controlled substances as a condition;

Persuant to §40.25, Waupaca County requires the driver's written consent to perform a **two year background check** with former employers for which the driver performed safety-sensitive functions. The two-year background check dates back from the driver's date of application with Waupaca County; If the background check reveals a non-negative result for the driver, Waupaca County will rescind the offer of hire.

Waupaca County will ask each driver whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer for which the driver applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the driver admits to a non-negative result with a former prospective employer, Waupaca County will rescind the offer of hire.

Waupaca County will make every attempt to obtain and review the background check before placing a new driver in a safety-sensitive position or as soon as possible thereafter; Waupaca County will document the good faith effort made to obtain the background check within thirty days of the driver's first day of performing safety-sensitive functions if no background check or not all of the background checks are received;

The information obtained from a previous employer includes any drug or alcohol test information obtained in like manner from previous employers;

Waupaca County will immediately release requested information to a former driver's current employer after reviewing the driver's specific, written consent;

Waupaca County will release results of this test to any applicant who, within sixty days of being notified of the disposition of the employment application, submits a written request for the results; *and*

Waupaca County invites the applicant who has a verified non-negative on this pre-employment test to reapply for employment with Waupaca County only after:

- ❑ One full-year has elapsed; *and*
- ❑ The applicant has successfully completed and complied with the DOT drug and alcohol testing regulations that a driver must meet before returning to the performing of safety-sensitive functions

A driver's refusal to submit to a pre-employment controlled substances test, once the process has commenced, is considered a refusal under this policy, for which Waupaca County will rescind its conditional offer of employment.

Post-Accident Testing

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, Waupaca County will test for alcohol and controlled substances for each driver:

- ❑ Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; *or*
- ❑ Who receives a moving violation citation (within eight hours for alcohol or thirty-two hours for controlled substances) under state or local law that involves:
- ❑ Bodily injury to any person who receives, as a result of the injury, immediate treatment away from the scene or accident; *or*
- ❑ Any vehicle being transported away from the scene by a tow truck or other motor vehicle after incurring disabling damage as a result of the accident.

Waupaca County shall consider the results of a breath or blood test for the use of alcohol, conducted by federal, state, or local officials having independent authority for the test, to meet the requirements for post-accident testing if:

- ❑ Such tests conform to the applicable federal, state, or local controlled substances testing requirements; *and*
- ❑ The employer obtains the results of the tests.

Alcohol testing:

- ❑ If a test is not administered within two hours following the accident, Waupaca County shall prepare and maintain on file a record stating the reasons the test was not promptly administered;
- ❑ If a test is not administered within eight hours following the accident, Waupaca County shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered; *and*
- ❑ Waupaca County shall submit the records to the Federal Motor Carrier Safety Administration (FMCSA) upon request.

Controlled substances testing:

- ❑ If a test is not administered within thirty-two hours following the accident, Waupaca County shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered; *and*
- ❑ Waupaca County shall submit the records to the Federal Motor Carrier Safety Administration (FMCSA) upon request.

A driver's refusal to submit to a post-accident alcohol and/or controlled substances test is considered a refusal under the DOT rule and subject to the "Consequences" section of this policy.

Random Testing

All drivers that operate in safety-sensitive positions are required to submit to random alcohol and controlled substances testing. A Service Agent maintains Waupaca County's random testing program. Waupaca County has a Service Agreement on file from the Service Agent stating that a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the driver's social security number or other comparable number, is used to select individuals for testing.

Random testing shall be reasonably spread throughout the year: selection is performed on a monthly basis. The minimum annual percentage rate for alcohol testing is ten percent of the average number of driver positions: Waupaca County requires and has documentation of a higher percentage rate in order to provide a buffer .

The minimum annual percentage rate for controlled substances testing is fifty percent of the average number of driver positions: Waupaca County requires and has documentation of a higher percentage rate in order to provide a buffer; *and*

The annual percentage rate for alcohol and controlled substances testing may change on an annual basis as determined by the DOT: the most current annual percentage rate for each super cedes that of this policy should they conflict.

Each driver has an equal chance of being selected each time a selection is performed. Each driver selected must be tested during the period selected.

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Random testing is unannounced:

Waupaca County will use the Instructions for Random Test form or similar form to notify a driver that a random test is required. Once notified, the driver must proceed to the test site immediately. Random alcohol testing will only be performed:

- While the driver is performing safety-sensitive functions;
- Just before the driver is to perform safety-sensitive functions; *or*
- Just after the driver has performed safety-sensitive functions.

A driver's refusal to submit to a random alcohol and/or controlled substances test is considered a refusal under the DOT rule and subject to the "Consequences" section of this policy.

Reasonable Suspicion Testing

Waupaca County requires a driver to submit to an alcohol and/or controlled substances test when it has reasonable suspicion to believe that the driver has violated the prohibitions of this policy.

Reasonable suspicion is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver;

Only supervisors or officials of Waupaca County that are trained in accordance with §382.603 are authorized to make the required observations for alcohol and/or controlled substances reasonable suspicion testing. A driver who suspects that another driver may be unfit for work should report his/her observations to a supervisor.

An agent of Waupaca County should escort a driver who requires testing to the collection site, during which time the agent will:

- Observe the driver to ensure that the driver does not obtain adulterants or substitute specimens;

- ❑ Not provide the driver with food, drink, candy, or medication or any kind; *and*
- ❑ Document any violations of the immediate two preceding points.

The agent will escort the driver back to the company where arrangements will be made for transport home via: Spouse or family member or friend – have the driver make the call or Taxicab at the driver’s expense (for which the driver will be reimbursed if all tests are negative).

The supervisor or official who makes the determination that reasonable suspicion exists to conduct alcohol testing shall not conduct the alcohol test. Alcohol testing is authorized for reasonable suspicion only if:

- ❑ The observations were made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with the rule; *and*
- ❑ Waupaca County directs the driver to undergo testing while he/she is performing safety-sensitive functions, just before performing safety-sensitive functions, or just after he/she has ceased performing such functions.

If an alcohol test is not administered within two hours following the determination, Waupaca County shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If an alcohol test is not administered within eight hours following the determination Waupaca County shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered;

Waupaca County will not take action against a driver under the DOT rule based solely on the driver’s behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit Waupaca County under non-DOT company policy from taking any action otherwise consistent with law.

A driver’s refusal to submit to a reasonable suspicion alcohol and/or controlled substances test is considered a refusal under the DOT rule and subject to the “Consequences” section of this policy.

DRUG TESTING PROCESS

Testing is conducted in a manner to assure a high degree of accuracy and reliability, using techniques, equipment, and laboratory facilities that have been approved by the Department of Health and Human Services (DHHS) as prescribed in 49 CFR Part 40. A Federal Custody and Control Form (CCF), with a unique specimen identification number, must accompany each split-specimen collection to the laboratory. The number is unique and attributes the specimen to the correct individual.

Initial Test

The laboratory performs an initial test on every specimen it receives. It uses an immunoassay test, which meets the requirements of the Food and Drug Administration (FDA) for commercial distribution. Please refer to the table below for the cut-off concentrations. Specimens that test negative (below the cut-off concentration) are reported as negative to the employer. No further testing of these negative specimens for drugs is permitted and the specimens shall either be discarded or pooled for use in the laboratory’s internal quality control program.

Confirmation Test

All specimens identified as positive on the initial test are confirmed for the class(es) of drugs screened positive on the initial test using gas chromatography/mass spectrometry (GC/MS) at the cut-off concentrations listed in the table below. All confirmations are by quantitative analysis.

Specimens that test negative on confirmatory tests are reported as negative. No further testing of these negative specimens for drugs is permitted and the specimens shall either be discarded or pooled for use in the laboratory's internal quality control program. Specimens that test positive are reported to the MRO as positive for a specific drug.

Cutoff Concentrations for Initial and Confirmation Tests

Type of Drug or Metabolite	Initial Test	Confirmation Test
Marijuana metabolites <i>Delta-9-tetrahydrocannabinol-9- carboxylic acid (THC)</i>	50	15
Cocaine metabolites (Benzoyllecgonine)	300	150
Phencyclidine (PCP)	25	25
Amphetamines <i>Amphetamine</i> <i>Methamphetamine</i>	1,000	500 (Specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/mL.)
Opiate metabolites <i>Codeine</i> <i>Morphine</i> <i>6-acetylmorphine (6-AM)</i>	2,000	2,000 2,000 10 (Test for 6--AM in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2,000 ng/mL.)

ALCOHOL TESTING PROCESS

Tests for breath alcohol concentration are conducted utilizing a National Highway Traffic Safety Administration (NHTSA) approved Evidential Breath Testing (EBT) device operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device, which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must be performed on a NHTSA approved EBT by a BAT. The confirmatory must be conducted at least fifteen minutes after the completion of the initial test and no longer than thirty minutes after the same. The EBT prints the results and the BAT records the results on an approved Alcohol Testing Form in order to attribute the results to the correct driver.

RESULTS

Waupaca County has provided the Service Agent with the name, phone number, and fax number of its designated employer representative (DER) so that it may transmit (fax) program results to or contact the DER with questions or required comments/notification under the DOT rule. Waupaca County has instructed The Service Agent to call the DER before faxing any results to ensure that he/she is able to receive the fax. The Service Agent may then transmit results with verbal permission.

Written Reports

The Service Agent must transmit a written report for each test result in a confidential manner. Positive results, results requiring immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test must be transmitted to Waupaca County on the same day the MRO verifies the results or the next business day.

The DER has established a relationship with Service Agent in order to identify the caller; *and*

Waupaca County requires – and has instructed the Service Agent – to call for any of the result types listed in this paragraph.

Negatives

Negative results require no further action and allow the driver to immediately operate or continue to operate in safety-sensitive functions, barring no further complications.

Non-Negatives

Waupaca County will immediately remove a driver from safety-sensitive functions upon receipt of positive results, refusals, verified adulterated results, and verified substituted results; verbal receipt by phone is acceptable, but Waupaca County must obtain the supporting documentation as soon as possible. Waupaca County will follow the process outlined in the “Consequences” section of this policy.

For adulteration or substitution, the driver has the burden of proof that there is a legitimate medical explanation for the result.

The driver must present information meeting this burden at the time of the verification interview. The MRO may extend this time up to five days;

The driver is responsible for arranging, conducting, or paying for any studies, examinations or analyses to determine whether a legitimate medical explanation exists.

If the MRO believes that the driver’s explanation may present a reasonable basis for concluding that there is a legitimate medical explanation, the MRO must direct the driver to obtain, within the five-day period set forth in §40.145 (e)(3), a further medical evaluation. This evaluation must be performed by a licensed physician (the “referral physician”), acceptable to the MRO, with expertise in the medical issues raised by the driver’s explanation. (The MRO may perform this evaluation if the MRO has appropriate expertise.)

The driver is responsible for finding or paying a referral physician. However, on request of the driver, the MRO must provide reasonable assistance to the driver’s efforts to find such a

physician. The final choice of the referral physician is the driver's, as long as the physician is acceptable to the MRO.

The MRO must make three attempts to contact the driver in the first twenty-four hour interval after receiving the result from the laboratory: one in the morning, one in the afternoon, and one in the evening. The Service Agent is aware of this requirement, as specified by Waupaca County's Service Agreement. From time to time however, the MRO is unable to contact a driver for an interview, based on non-negative results from the laboratory, during this interval. The MRO must then contact the DER for Waupaca County in order to instruct the DER to have the driver call the MRO. The DER will:

- Discreetly attempt to contact the driver immediately;
- Make, at minimum, three attempts over the next twenty-four hours to contact the driver at the daytime and evening phone numbers listed on the CCF;
- Document the date and time of the contact, if successful, and inform the MRO;
- Instruct the driver to contact the MRO immediately;
- In the case of non-contact, document the dates and times of all attempts made; *and/or*
- In the case of non-contact, leave a message for the driver by any practicable means (i.e., voice mail, letter, answering machine, etc.).

Split-Specimen Testing

A driver has seventy-two hours from the time of notification of a non-negative result by an MRO or DER to request a split-specimen test. The request may be verbal or in writing.

Waupaca County will remove the driver from performing safety-sensitive functions and begin the return-to-duty process without waiting for the split-specimen results.

The driver will pay for any split-specimen result that:

- Reconfirms as a positive result; *or*
- Reconfirms as an adulterated or substituted result (both of which constitute a refusal to test).

Waupaca County will direct the driver to submit to a direct observation collection immediately and without advanced warning upon notification from the MRO of cancelled tests resulting from the non-availability of a split-specimen or invalid results on a split-specimen.

Waupaca County will treat as a refusal, a split-specimen result that indicates adulteration, and that is later verified by the original testing laboratory based on additional testing of the primary specimen whereby the adulterant is also detected.

Cancelled Tests

Invalid results will be cancelled by the MRO. When the TPA/MRO reports a cancelled test to Waupaca County, the TPA/MRO will either:

- Check the "Test Cancelled" box on the CCF and write "Invalid Result" and "direct observation collection **not required**" on the "Remarks" line of the CCF when the driver provides an acceptable explanation for the invalid test. No further action is necessary, unless a negative test result is required (i.e., pre-employment, return-to-duty, or follow-up); *or*
- Check the "Test Cancelled" box on the CCF and write "Invalid Result" and "direct observation collection **required**" on the "Remarks" line of the CCF when the driver

doesn't provide an acceptable explanation for the invalid test. Waupaca County will immediately direct the driver to the collection site for the direct observation collection

Rejected specimens will be cancelled by the MRO. When the TPA/MRO reports a cancelled test to Waupaca County, the TPA/MRO will check the "Test Cancelled" box on the CCF and enter the reason on the "Remarks" line of the CCF. No further action is necessary, unless a negative test result is required (i.e., pre-employment, return-to-duty, or follow-up).

Dilute Specimens

The MRO must explain to Waupaca County the obligations and choices thereof when reporting a dilute specimen. Waupaca County will treat the following dilute specimens as specified:

Positive results on dilute specimens are treated as positives; the driver does not have to take another test.

Negative results:

- A negative dilute specimen with a creatinine level lower than 20.0 mg/dL but greater than 5.0 mg/dL requires Waupaca County to require the driver to submit to an unobserved recollection without advance notice. Should the recollection also be dilute, its result is the result of record and no further collection or testing is authorized, unless the creatinine level is 5.0 mg/dL or less;
- A negative dilute specimen with a creatinine level of greater than or equal to 2.0 mg/dL but less than or equal to 5.0 mg/dL requires the driver to undergo an immediate recollection under direct observation; *or*
- A negative dilute specimen with a creatinine level less than 2.0 mg/dL or "creatinine not detected" is considered substituted and subject to the "Consequences" section of this policy.

Note: The MRO will direct the DER as to how to proceed under each circumstance.

Shy Bladder

Drivers who are unable to provide a urine specimen on the initial attempt must remain at the collection site for three hours, during which collection site personnel will:

- Monitor the driver;
- Provide up to forty ounces of fluids at reasonable intervals throughout the three-hour period; *and*
- Have the driver attempt to provide a specimen at reasonable intervals throughout the three-hour period.

Waupaca County will request documentation for all shy bladder situations where the driver does not provide a specimen within the three-hour period.

When the collector notifies the DER that the driver has not provided a sufficient amount of urine, Waupaca County will, after consulting with the MRO, direct the driver to obtain, within five working days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the driver's failure to provide a sufficient specimen.

The MRO will cancel the test if he/she determines that, based on the medical evaluation, the driver has a medical condition which prevents him/her from providing a sufficient amount of urine. The MRO and Waupaca County will take no further action. The MRO will indicate a refusal to test if he/she determines that, based on the medical evaluation, the driver does not have a medical condition which prevents him/her from providing a sufficient amount of urine. Waupaca County will remove the driver from performing safety-sensitive functions in accordance with the

“Consequences” section of this policy.

Shy Lung

When a breath alcohol technician or screening test technician notifies the DER that the driver has not provided a sufficient amount of breath, Waupaca County will direct the driver to obtain, within five working days, an evaluation from a licensed physician, acceptable to Waupaca County, who has expertise in the medical issues raised by the driver’s failure to provide a sufficient specimen.

Direct Observation and Monitored Collections

Persuant to 49 CFR 40.67 and 40.69, the regulations do require direct observed collections, or monitored collections under specific circumstances without advance notice but with an explanation as to why.

A driver’s refusal to provide a urine specimen under direct observation or monitored collection when warranted under the DOT rule is considered a refusal for purposes of the rule and subject to the “Consequences” section of this policy.

RECORD RETENTION

Waupaca County and/or its service agents will maintain records as indicated in the following table:

Record Description	Maintained By	Years
Alcohol test results with a concentration of 0.02 or greater	Waupaca County	5
Verified positive drug test results	Service Agent	5
Documentation of refusals to take required alcohol tests	Waupaca County	5
Documentation of refusals to take required drug tests, including substituted or adulterated drug test results	Service Agent	5
SAP reports	Waupaca County	5
Follow-up tests and schedules for follow-up tests	Waupaca County	5
Information obtained from previous employers concerning drug and alcohol test results of drivers on background checks	Waupaca County	3
Evidential breath test (EBT) device inspection, maintenance, and calibration records	Service Agent	2

Negative and cancelled drug test results	Service Agent	1
Alcohol test results with a concentration of less than 0.02	Waupaca County	1

Waupaca County, in its agreements with service agents, has informed them that all records must be maintained in a location with controlled access. Upon request, they must produce all requested records at Waupaca County within two business days; *and* wherever permitted, records stored electronically are easily accessible, legible, and formatted and stored in an organized manner.

This will be in full force and effect upon passage and publication by the Waupaca County Board of Supervisors.

Passed this 16th day of September, 2008

26 ayes 0 nays

ATTEST:

Mary A. Robbins, Waupaca County Clerk

ACKNOWLEDGEMENT OF RECEIPT

I acknowledge receipt of Waupaca County's DOT Substance Abuse Policy. I understand that the conditions notes in this policy are now conditions of my employment and that violation of this policy/program may result in the termination of my employment.

Employee Name (Printed)

Employee Signature Date