

<b>ITASCA COUNTY POLICIES &amp; PROCEDURES</b>	<b>EFFECTIVE DATE:</b>	<b>POLICY #:</b>
	<b>RBA #:</b>	<b>BOARD APPROVAL DATE: Format Updates:</b>
<b>ADMINISTRATION HUMAN RESOURCES</b>	<b>REFERENCES: Federal Omnibus Transportation Employee Testing Act Federal Motor Carrier Safety Association (FMCSA) Rules, 49 CFR, Part 40 FMCSA 49 CFR, Part 382 Hazardous Materials Transportation Act 49 U.S.C. 5103(b) Hazardous Materials Regulations 49 CFR Part 172, Subpart F</b>	
<b>SUBJECT: ITASCA COUNTY DRUG AND ALCOHOL TESTING FOR COMMERCIAL DRIVERS</b>		

**I. PURPOSE AND OBJECTIVES**

- A. Itasca County has a vital interest in maintaining safe, healthful, and efficient working conditions for employees, and recognizes that individuals who are impaired because of drugs and/or alcohol jeopardize the safety and health of other workers as well as themselves. Itasca County is concerned about providing a safe workplace for its employees, and while the County does not intend to intrude into the private lives of its employees, it is the goal to provide a work environment conducive to maximum safety and optimum work standards. Alcohol and drug abuse can cause unsatisfactory job performance, increased tardiness and absenteeism, increased accidents and workers/compensation claims, higher insurance rates, and an increase in theft of County property. The use, possession, manufacture, sale, transportation, or other distribution of controlled substance or controlled substance paraphernalia and the unauthorized use, possession, transportation, sale, or other distribution of alcohol is contrary to this policy and jeopardizes public safety.
- B. In response to regulations issued by the United States Department of Transportation (DOT), the County has adopted this policy on alcohol and controlled substances for employees who hold a commercial driver’s license (CDL) to perform their duties.
- C. Given the significant dangers of alcohol and controlled substance use, each applicant and driver must abide by this policy as a term and condition of hiring and continued employment. Moreover, Federal Law requires the County to implement such a policy.
- D. To ensure this policy is clearly communicated to all drivers and applicants, and in order to comply with applicable Federal Law, drivers and applicants are required to review this policy and sign the Policy Acknowledgement, Appendix G portion.
- E. Because changes in applicable law and the County’s practices and procedures may occur from time to time, this policy may change in the future, and nothing in this policy is intended to be a contract, promise, or guarantee the County will follow any particular course of action, disciplinary, rehabilitative or otherwise, except as required by the law. This policy does not in any way affect or change the status of any at-will employee.
- F. Any revision to the Federal Omnibus Transportation Employee Testing Act will take precedent over this policy to the extent the policy has not incorporated those revisions.

**II. PERSONS SUBJECT TO TESTING & TYPES OF TESTS**

- A. All employees are subject to testing when their job duties include performing safety-sensitive duties with County vehicles that:
  - 1. Have a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or

2. Have a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or
3. Are designed to transport 16 or more passengers, including the driver; or
4. Are of any size and are used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations 49 CFR Part 172, Subpart F.
5. The County may test any applicant to whom a conditional offer of employment has been made and any driver for controlled substance and alcohol under any of the following conditions:
  - a. **Pre-employment testing.** All applicants, including current employees seeking a transfer, applying for a position where duties include performing safety-sensitive duties described below, will be required to take a drug test prior to the first time a driver performs safety-sensitive functions for the County. A driver may not perform safety-sensitive functions unless the driver has received a controlled substance test result from the Medical Review Officer (MRO) indicating a verified negative test result. In addition to pre-employment controlled substance testing, applicants will be required to authorize, in writing, former employers to release alcohol test results of .04 or greater, positive controlled substance test results, refusals to test, other violations of drug and alcohol testing regulations, and completion of return to duty requirements within the preceding three years.
    - i. The County will contact the candidates DOT regulated previous and current employers within the last three years for drug and alcohol test results as referenced above, and review the testing history if feasible before the employee first performs safety-sensitive functions for the County. See Appendix C
    - ii. Beginning in 2020, the County will also conduct a limited query of the Federal Motor Carrier Safety Administration's Clearinghouse for all candidates. In addition, at least once a year, the County will conduct a limited query of the Clearinghouse for each currently employed CDL driver. If the limited query reveals that the Clearinghouse has information about resolved or unresolved drug and alcohol program violations by a candidate or current employee, he or she will be asked to provide electronic consent to a full query of the Clearinghouse (unless he or she has previously provided electronic consent), In the event a full query of the Clearinghouse reveals unresolved violation information for a candidate or current employee, the driver will not be permitted to perform safety-sensitive functions, including the operation of a Commercial Motor Vehicle and, in the case of a candidate, may have their conditional offer of employment rescinded or, in the case of a current employee, may be subject to discipline.
  - b. **Post-Accident Testing.** As soon as practicable following an accident involving a commercial motor vehicle operating on a public road, the County will test each surviving driver for controlled substances and alcohol when the following occurs:
    - i. The action involves a fatality.

- ii. The driver receives a citation for a moving traffic violation from the accident and an injury is treated away from the accident scene.
- iii. The driver receives a citation for a moving traffic violation from the accident and a vehicle is required to be towed from the accident scene.
- c. The following chart summarizes when DOT post-accident testing needs to be conducted:

Type of Accident Involved	Citation issued to the DOT covered CDL driver?	Test must be performed by the County
1. Human Fatality	Yes No	Yes Yes
2. Bodily injury with immediate medical treatment away from the scene.	Yes No	Yes No
3. Disabling damage to any motor vehicle requiring tow away	Yes No	Yes No

A driver subject to post-accident testing must remain readily available or the driver will be deemed to have refused to submit to testing. This requirement to remain ready for testing does not preclude a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

- d. **Post-Accident Controlled Substance Testing.** Drivers are required to submit a urine sample for post-accident controlled substance testing as soon as possible. If the driver is not tested within thirty-two (32) hours after the accident, the County will cease its attempts to test the driver and prepare and maintain a file on record stating why the test was not properly administered.
- e. **Post-Accident Alcohol Testing.** Drivers are required to submit to post-accident alcohol testing as soon as possible. After an accident, consuming alcohol is prohibited until the driver is tested. If the driver is not tested within two (2) hours after the accident, the County will prepare and maintain on file a record stating why the test was not administered within that time. If eight (8) hours have elapsed since the accident and the driver has not submitted to an alcohol test, the County will cease its attempts to test the driver and prepare and maintain on file a record stating why the test was not administered.
- f. The County may accept the results of a blood or breath test in place of an alcohol test and urine test for the use of controlled substances if:
  - i. The tests are conducted by federal, state or local officials having independent authority for the test, and
  - ii. The tests conform to applicable federal, state, or local testing requirements, and
  - iii. The test results can be obtained by the County.
  - iv. Whenever such a test is conducted by a law enforcement officer, the driver must contact the County and immediately report the existence of the test, providing the name, badge number, and telephone number of the law enforcement officer who conducted the test.

g. **Random Testing.**

- i. Every driver will be subject to unannounced alcohol and controlled substance testing on a random selection basis. Drivers will be selected for testing by use of a scientifically valid method under which each driver has a chance of being selected each time selections are made. These random tests will be conducted throughout the calendar year. Each driver who is notified of selection for random testing must cease performing safety-sensitive functions and report to the designated test site immediately. It is mathematically possible drivers may be selected and tested more than once, and others not at all.
- ii. If a driver is selected for a random test while he/she is absent, on leave or away from work, that driver may be required to undergo the test when he/she returns to work.
- iii. Federal Law requires the County to test at a rate of at least fifty percent (50%), of its average number of drivers for controlled substances each year, and to test at a rate of at least ten percent (10%) of its average number of drivers for alcohol each year. These minimum testing rates are subject to change by the DOT.

h. **Reasonable Suspicion Testing.**

- i. When there is reasonable suspicion to believe an employee is under the influence of drugs and/or alcohol the Reasonable Suspicion Report Form (Appendix F) must be completed.
- ii. When a supervisor has reasonable suspicion to believe a driver has engaged in conduct prohibited by Federal Law or this policy, the County will require the driver to submit to an alcohol and/or controlled substance test.
- iii. The County's determination that reasonable suspicion exists to require the driver to undergo an alcohol test will be based on "specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver." In the case of controlled substance, the observations may include indications of the chronic and withdrawal effects of a controlled substance.
- iv. The required observations for reasonable suspicion testing will be made by a supervisor or other person designated by the County who has received appropriate training in identification of actions, appearance and conduct of a driver which are indicative of the use of alcohol or controlled substance. These observations leading to an alcohol or controlled substance test will be reflected in writing and signed by the supervisor who made the observations. The record will be retained by the County. The person who makes the determination that reasonable suspicion exists to conduct testing, will not be the person conducting the testing, which shall instead be conducted by another qualified person.

- v. Alcohol testing is authorized only if the observations are made during, just before, or just after the driver has ceased performing such functions. If a reasonable suspicion alcohol test is not administered within two (2) hours following the determination of reasonable suspicion, the County will prepare and maintain on file a record stating the reason(s) the alcohol test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the County will prepare and maintain on file a record stating the reason(s) the alcohol test was not administered, and will cease attempts to conduct the alcohol test.
- vi. Notwithstanding the absence of a reasonable suspicion test, no driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol use, nor will the County permit the driver to perform safety-sensitive functions until (1) an alcohol test is administered and the driver's alcohol concentration is less than .02; or (2) twenty-four (24) hours have elapsed following the determination of reasonable suspicion.

I. **Return-to-Duty Testing**

- i. The County reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policy and collective bargaining agreements. Except as otherwise required by law, the County is not obligated to reinstate or requalify such drivers for a first positive test result.
- ii. Should the County consider reinstatement of a DOT covered driver, the driver must undergo a Substance Abuse Professional (SAP) evaluation and participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol testing with a result indicating an alcohol concentration of less than 0.02 and/or a controlled substance test with a verified negative result before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP determines if the driver has completed the education/treatment as prescribed.
- iii. The employee is responsible for paying for all costs associated with the return-to-duty test. The controlled substance test will be conducted under direct observation.

J. **Follow-Up Testing**

- i. The County reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective

bargaining agreements. Except as otherwise required by law, the County is not obligated to reinstate or requalify such drivers.

- ii. Should the County reinstate a driver following a determination by a SAP that the driver is in need of assistance in resolving problems associated with alcohol use and/or use of controlled substances, the County will ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency of such follow-up testing will be directed by the SAP and will consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. Follow-up testing will not exceed sixty (60) months from the date of the driver's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six (6) tests have been administered, if the SAP determines such test is no longer necessary. The employee is responsible for paying for all costs associated with follow-up tests.
- iii. Follow-up alcohol testing will be conducted only when the driver is performing safety-sensitive functions, or immediately prior to or after performing safety-sensitive functions.

K. **Cost of Required Testing.** The County will pay for the cost of pre-employment, post-accident, random, and reasonable suspicion controlled substance and alcohol testing requested or required of all job applicants and employees. The driver must pay for the cost of all requested confirmatory re-tests, return-to-duty, and follow-up testing.

### III. SAFETY-SENSITIVE FUNCTIONS

1. The following functions are considered safety-sensitive:
  - a. All time waiting to be dispatched to drive a commercial motor vehicle.
  - b. All time inspecting, servicing, or conditioning a commercial motor vehicle.
  - c. All time driving at the controls of the commercial motor vehicle.
  - d. All other time in or upon a commercial motor vehicle, except time spent resting in a sleeper berth.
  - e. All time loading or unloading a commercial motor vehicle, attending the same, giving or receiving receipts for shipment being loaded or unloaded or remaining in readiness to operate the vehicle.
  - f. All time repairing, obtaining assistance, or attending to a disabled commercial motor vehicle.
2. The County may test any applicant to whom a conditional offer of employment has been made and any driver for controlled substance and alcohol under any of the conditions listed in Section III, Persons Subject to Testing and Types of Tests, above.

### IV. REQUIRED PRIOR CONTROLLED SUBSTANCE AND ALCOHOL CHECKS FOR APPLICANTS:

1. The County will conduct prior drug and alcohol checks of applicants for employment to drive a commercial motor vehicle. Applicants must execute a consent form (Appendix A) authorizing the County to obtain the required information. Pursuant to the applicant's consent form, the County will obtain information on the applicant's alcohol test with a concentration result of 0.04 or greater, positive controlled substance test results, and refusals to be tested within the preceding three (3) years which are maintained by the applicant's previous employers. The County will obtain all information concerning the applicant which is maintained by the applicant's previous employers within the preceding three (3) years pursuant to DOT and FMCSA controlled substance and alcohol testing regulations. The County will review such records, if feasible, prior to the first time a driver performs safety-sensitive functions.

## V. PROHIBITED CONDUCT

1. The following conduct is explicitly prohibited by applicable DOT and FMCSA regulations and therefore constitutes violation of County policy.
  - a. **Under the influence of alcohol when reporting for duty or while on duty.** No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.02, but less than 0.04, will be removed from duty for twenty-four (24) hours, escorted home and placed on vacation, compensatory time off, or another appropriate leave of absence for hours missed from work
  - b. **On-Duty Use of Alcohol.** No driver may use alcohol while performing safety-sensitive functions.
  - c. **Pre-Duty Use of Alcohol.** No driver may perform safety-sensitive functions within four (4) hours after using alcohol. If an employee has had alcohol within four (4) hours they are to notify their supervisor before performing any safety-sensitive functions.
  - d. **Alcohol Use Following an Accident.** No driver required to take a post-accident alcohol test may use alcohol for eight (8) hours following the accident, or until the driver undergoes a post-accident alcohol test, whichever occurs first.
  - e. **Refusal to Submit to a Required Alcohol or Controlled Substance Test.**
    - i. No applicant or driver may refuse to submit to pre-employment, post-accident, random, reasonable suspicion or follow-up alcohol or controlled substance testing. See Appendix B.
    - ii. In the event an applicant or driver does in fact refuse to submit to required alcohol or controlled substance testing, no test will be conducted. Refusal by a driver to submit to controlled substance or alcohol testing will be considered a positive test result, will cause disqualification from performing safety-sensitive functions, and may appear on the driver's permanent record. Drivers who refuse to submit to testing will be subject to discipline, up to and including termination. In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements, beginning January 6, 2020, the County will report a driver's refusal to submit to a DOT test for drug or alcohol use to the Clearinghouse within three business days. If an applicant refuses to

submit to pre-employment controlled substance testing, any applicable conditional offer will be withdrawn.

iii. For purposes of this section, a driver is considered to have refused to submit to an alcohol or controlled substance test when the driver: (1) Fails to provide adequate breath for alcohol testing without a valid medical explanation after he/she has received notice of the requirement for breath testing; (2) Fails to provide adequate urine for controlled substance testing without a genuine inability to provide a specimen (as determined by a medical evaluation), after he/she has received notice of the requirement for urine testing; (3) Fails to report for testing within a reasonable period of time as determined by the County; (4) Fails to remain at a testing site until testing is complete; (5) In the case of directly observed or monitored collection, fails to permit observation or monitoring; (6) Fails or declines to take a second test as required by the County and/or collector; (7) Fails to undergo a medical examination as directed by the County pursuant to Federal Law; (8) Refuses to complete and sign the alcohol testing form, to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise cooperate in any way that prevents the completion of the testing process or engages in conduct that clearly obstructs the test process.

f. **Altering or Attempting to Alter a Urine Sample or Breath Test.** A driver altering or attempting to alter a urine sample or controlled substance test, or substituting or attempting to substitute a urine sample, will be subject to providing a specimen under direct observation. Both specimens will be subject to laboratory testing. In such case, the employee may be subject to immediate terminated of employment and any job offer made to an applicant will be immediately withdrawn.

g. **Controlled Substance Use.**

i. No driver may 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, in writing, the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers must forward this information regarding therapeutic controlled substance use to the County immediately after receiving such advice.

ii. Having a medical marijuana card and/or a cannabis prescription from a physician does not allow anyone to use or possess that drug in the County's workplace. The Federal government still classifies cannabis as an illegal drug. There is no acceptable concentration of marijuana metabolites in the urine or blood of an employee who performs safety-sensitive duties for the County. Employees are still subject to being tested under our policies, as well as for being disciplined, suspended, or terminated after testing positive for cannabis while at work.

h. **Controlled Substance Testing.** No driver may report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive for controlled substances. In addition to the conduct prohibited by applicable DOT and FMCSA regulations, the County also maintains other applicable policies regarding drugs and alcohol that are applicable to all employees. For specifics regarding those



requirements, refer to the County's policy for Non-DOT Related Drug and Alcohol policy.

## VI. COLLECTION AND TESTING PROCEDURES

1. Drivers are required to report immediately upon notification to the collection site. For random tests conducted off site, employees may use a County vehicle to drive to the collection site. Drivers will be expected to provide a photo ID card for identification to the collection site staff. All drivers will be expected to cooperate with the collection site personnel request to remove any unnecessary outer garments such as coats, sweaters or jackets, and will be required to empty their pockets. Collection site personnel will complete a Federal Custody and Control Form (CCF) which drivers providing a sample will sign as well.
  - a. **Alcohol Testing.** Employees will be tested for alcohol just before, during or immediately following performance of a safety-sensitive function. If a driver is also taking a DOT controlled substance test, generally speaking, the alcohol test is completed before the urine collection process begins. Screening tests for alcohol concentration will be performed utilizing a non-evidential screening device included by the National Highway Traffic Safety Administration on its conforming products list (a saliva screening device), or an evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT) at a collection site. An alcohol test usually takes approximately fifteen (15) minutes if the result is negative. If a driver's first attempt is positive with an alcohol concentration of 0.02 or greater, the driver will be asked to wait at least fifteen (15) minutes and then be tested again. The driver may not eat, drink or place anything in his/her mouth (cigarette, chewing tobacco, chewing gum, candy) during this time. All confirmation tests will be conducted in a location that affords privacy to the driver being tested, unless unusual circumstances (when it is essential to conduct a test outdoors at the scene of an accident) make it impracticable to provide such privacy. Any results less than 0.02 alcohol concentration is considered a negative test result. If the driver attempts and fails to provide an adequate amount of breath, he/she will be referred to a physician to determine if the driver's inability to provide a specimen is genuine or constitutes a refusal to test. Alcohol test results are reported directly to the County by the collection site staff.
  - b. **Controlled Substance Testing:**
    - i. The County will use a "split urine specimen" collection procedure for controlled substance testing. Collection of urine specimens for controlled substance testing will be conducted by an approved collector and will be conducted in a setting and manner to ensure the driver's privacy.
    - ii. Controlled substance testing generally take about fifteen (15) minutes. At the collection site, the driver will be given a sealed container and must provide at least forty-five (45) milliliters of urine for testing. Once the sample is provided, the collection site personnel will check the temperature and color and look for signs of contamination. The urine is then split into two separate specimen containers (A, or primary, and B, or split) with identifying labels and security seals affixed to both. The collection facility will be responsible for maintaining a proper chain of custody for delivery of the sample to a DHHS-Certified laboratory for

analysis. The laboratory will retain a sufficient portion of any positive sample for testing and store that portion in a scientifically acceptable manner for a minimum 365-day period.

- iii. If an employee fails to provide a sufficient amount of urine to permit a controlled substance test (45 milliliters of urine), the collector will discard the insufficient specimen, unless there is evidence of tampering with that specimen. The collector will urge the driver to drink up to forty (40) ounces of fluid, distributed reasonably over a period of up to three (3) hours, or until the driver has provided a sufficient urine specimen, whichever occurs first. If the driver has not provided a sufficient specimen within three (3) hours of the first unsuccessful attempt, the collector will cease efforts to attempt to obtain a specimen. The driver must then obtain, within five (5) calendar days an evaluation from a licensed physician, acceptable to the Medical Review Officer (MRO), who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. If the licensed physician concludes the driver has a medical condition, or with a high degree of probability could have, precluded the driver from providing a sufficient amount of urine, the County will consider that test to have been cancelled. If a licensed physician cannot make such a determination, the County will consider the driver to have engaged in a refusal to test, and will take appropriate disciplinary action under this policy.
- iv. The primary specimen is used for the first test. If the test is negative, it is reported to the MRO who then reports the result, following a review of the CCF form for compliance, to the County. If the initial result is positive or non-negative, a "confirmatory retest" will be conducted on the primary specimen. If the confirmatory retest is also positive, the result will be sent to the MRO. The MRO will contact the driver to verify the positive result. If the MRO is unable to reach the driver directly, the MRO must also contact the County who will direct the driver to contact the MRO.

## **VII. REVIEW OF TEST RESULTS**

1. The MRO is a licensed physician with knowledge and clinical experience in substance abuse disorders, and is responsible for receiving and reviewing laboratory results of the controlled substances test as well as evaluating medical explanations for certain drug test results. Prior to making a final decision to verify a positive test result, the MRO will give the driver or the job applicant an opportunity to discuss the test result, typically through a phone call. The MRO, or a staff person under the MRO's supervision, will contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result. If the individual wishes to discuss the test results:
  - a. The individual may be required to speak and/or meet with the MRO, who will review the individual's medical history, including any medical records provided.
  - b. The individual will be afforded the opportunity to discuss the test results and to offer any additional or clarifying information which may explain the positive test result. If the individual believes a mistake was made at the collection site, at the labor, on a chain-of-custody form, or that the drug test results are caused by lawful substance use, the employee should tell the MRO.

- c. If there is some new information which may affect the original finding, the MRO may request the laboratory to perform additional testing on the original specimen in order to further clarify the results; and
  - d. A final determination will be made by the MRO that the test is either positive or negative, and the individual will be so advised.
2. If the MRO upholds the positive, adulterated or substituted drug determination, that test result will be provided to the County. There is no opportunity to explain a positive alcohol test provided in the DOT regulations.
  3. The driver can request the MRO to have the split specimen (the second "B" container) tested at the driver's expense. This includes all costs that may be associated with the retest. There is no split specimen testing for an invalid result. The driver has seventy-two (72) hours after they have been notified of the positive result to make this request. If the employee requests an analysis of the split specimen, the MRO will direct the laboratory to send the split specimen to another certified laboratory for analysis.
  4. If an employee has not contacted the MRO within seventy-two (72) hours, the employee may present information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, or other circumstances unavoidably prevented the employee from making timely contact. If the MRO concludes there is a legitimate explanation for the employee's failure to contact within seventy-two (72) hours, the MRO will direct the analysis of the split specimen.
  5. If the results of the split specimen are negative, the County may pay for all costs associated with the test and there will be no adverse action taken against the employee or job applicant.

## VIII. NOTIFICATION OF TEST RESULTS

1. **Employees.** The County will notify the driver of the results of a random, reasonable suspicion, and post-accident tests for controlled substance if the test results are verified positive, and will inform the driver which controlled substance or substances were verified as positive. Results of alcohol tests will be immediately available from the collection agent.
2. **Right to Confirmatory Retest.** Within seventy-two (72) hours after receiving notice of a positive controlled substance test result, an applicant or driver may request through the MRO a re-analysis (confirmatory retest) of the driver's split specimen. Action required by Federal regulation as a result of a positive controlled substance test (removal from safety-sensitive functions) will not be stayed during retesting of the split specimen. If the result of the confirmatory retest fails to reconfirm the presence of the controlled substance(s) or controlled substance metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO will cancel the test.
3. **Dilute Specimens.** Dilute Negatives Creatinine concentration of specimen is equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL. If the County receives information that a driver has provided a dilute negative specimen, the County will direct a recollection pursuant to the MRO's direction, under direct observation. Creatinine concentration of specimen is greater than 5 mg/dL. If the MRO advises the County that the driver's dilute negative specimen contains a creatinine concentration greater than 5 mg/dL, the County will direct the driver to take a second screening test, not under direct observation. The second screening test will be performed as soon as possible after the County receives word of the dilute negative specimen. .

## IX. CONSEQUENCES FOR DRIVERS ENGAGED IN PROHIBITED CONDUCT

1. **Job Applicants.** Any applicable conditional offer of employment will be withdrawn from a job applicant or employee seeking a transfer who refuses to be tested or tests positive for controlled substance pursuant to this policy.
2. **Employees.** Drivers who are known to have engaged in prohibited behavior with regard to alcohol misuse or use of controlled substance, as defined earlier in this policy, are subject to the following consequences:
  - a. **Removal from Safety-Sensitive Functions.**
    - i. No driver may perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by Federal law.
    - ii. No driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 may perform, or continue to perform, safety-sensitive functions for the County, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty, but not less than twenty-four (24) hours following administration of the test.
    - iii. If a driver tests positive under this policy, or is found to have an alcohol concentration of 0.02 or greater but less than 0.04, the driver will be removed from safety-sensitive duties and escorted home; the driver should not be allowed to drive home but be escorted to his or her home. The driver will then be placed on leave and may use any available earned leave for the hours missed from work.
3. **Notification of Resources Available.** The County will advise each driver who has engaged in conduct prohibited by Federal law or who has a positive alcohol or controlled substance test of the resources available to the driver, in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substance, including the names, addresses, and telephone numbers of Substance Abuse Professionals (SAP) and counseling and treatment programs including, but not limited to, the County's Employee Assistance Program (EAP). The County will provide this SAP listing in writing at no cost to the driver.
4. **Discipline.** The County reserves the right to impose whatever discipline the County deems appropriate in its sole discretion, up to and including termination for a first occurrence, against the drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the County is not obligated to reinstate or requalify such drivers following a first positive confirmed controlled substance or alcohol test.
5. **Evaluation and Return to Duty Testing.** Should the County wish to consider reinstatement of a driver who engaged in conduct prohibited by Federal law and/or who had a positive alcohol or controlled substance test, the driver must undergo a SAP evaluation, participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or a controlled substance test with a verified negative result before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP will determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and controlled substance use and will ensure the driver properly follows any rehabilitation program and submits to unannounced follow-up alcohol and controlled substance testing.
6. **Follow-Up Testing.** If the driver passes the return-to-duty test, he/she will be subject to unannounced follow-up alcohol and/or controlled substance testing. The number and

frequency for such follow-up testing will be directed by the SAP and will consist of at least six (6) tests in the first twelve (12) months. These tests will be conducted under direct observation.

7. **Refusal to Test.** All drivers and applicants have the right to refuse to take a required alcohol and/or controlled substance test. If an employee refuses to undergo testing, the employee will be considered to have tested positive and may be subject to disciplinary action, up to and including termination. Refer to Refusing a Test, item V.1.e, in this policy.
8. **Responsibility for Cost of Evaluation and Rehabilitation.** Drivers will be responsible for paying the cost of evaluation and rehabilitation (including services provided by an SAP) recommended or required by the County, FMCSA or DOT rules, except to the extent that such expense is covered by an applicable employee benefit plan or imposed on the County pursuant to a collective bargaining agreement.
9. **Reporting to the FMCSA's CDL Drug and Alcohol Clearinghouse.** In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements beginning January 6, 2020, the County will report the following information to the Clearinghouse within three business days:
  - a. A DOT alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
  - b. A negative DOT return-to-duty test result;
  - c. The driver's refusal to submit to a DOT test for drug and alcohol use;
  - d. An "Actual knowledge" violation; and
  - e. A report that the driver successfully completed all DOT follow-up tests as ordered by an SAP.

## **X. LOSS OF CDL LICENSE FOR TRAFFIC VIOLATIONS IN COMMERCIAL AND PERSONAL VEHICLES**

1. Effective August 1, 2005, the FMCSA established strict rules impacting when CDL license holders can lose their CDL for certain traffic offenses in a commercial or personal vehicle. Employees are required to notify their supervisor immediately if the status of their CDL license changes in any way.

## **XI. MAINTENANCE AND DISCLOSURE OF RECORDS**

1. Except as required or authorized by law, the County will not release driver's information that is contained in records required to be maintained by this policy or FMCSA and DOT regulations. Beginning in 2020, the County will be required to query and report to the agency's Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse prior to hiring new drivers, will conduct annual checks of existing CDL-drivers, and will report certain violations of the DOT drug and alcohol testing program for holders of CDLs. In addition, a driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or a controlled substance, including any records pertaining to his/her alcohol or controlled substance tests.

## **XII. POLICY CONTACT ADDITIONAL INFORMATION**

1. If you have any questions about this policy or the County's controlled substance and alcohol testing procedures you may contact your immediate Supervisor or Human Resources to obtain additional information.

### XIII. FINAL AND LAST CHANCE AGREEMENT

1. The Itasca County Board, Unions and Associations have agreed upon and approved a Final and Last Chance Agreement (Board approved 8/26/08, updated 11/27/12). See Appendix E.

### XIV. DEFINITIONS

1. **Accident.** Means an occurrence involving a commercial motor vehicle operating on a public road which results in a fatality, bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. The term "accident" does not include an occurrence involving only boarding and alighting from a stationary motor vehicle, an occurrence involving only the loading or unloading of cargo, or an occurrence in the course of the operation of a passenger car or multipurpose passenger vehicle unless the vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 C.F.R. 177.823, 49 C.F.R. 382.303(a) or 49 C.F.R. 382.303(f).
2. **Alcohol Concentration (or content).** Means the alcohol on a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test. 49 C.F.R. 382.107.
3. **Alcohol Use.** Means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. 49 C.F.R. 382.107.
4. **Applicant.** Means a person applying to drive a commercial motor vehicle. 49 C.F.R. 382.107.
5. **Breath Alcohol Technician (BAT).** Means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT). 49 C.F.R. 40.3.
6. **County Premises.** Means all job sites, facilities, offices, buildings, structures, equipment, vehicles and parking areas, whether owned, leased, used or under the control of the County.
7. **Collection Site.** Means a place designated by the County where drivers present themselves for the purpose of providing a specimen of their urine or breath to be analyzed for the presence of alcohol or controlled substances. 49 C.F.R. 40.3.
8. **Commercial Motor Vehicle.** Means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle (1) has a gross combination weight rating or gross combination weight of 26,001 or more pounds, whatever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or (3) is designed to transport sixteen (16) or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103 (b))and which require the motor vehicle to be placarded under the Hazardous Materials Regulation. (49 C.F.R. part 172, subpart F) 382.107.
9. **Confirmation (or Confirmatory) Test.** For alcohol testing means a second test, following a positive non-evidential test, following a positive non-evidential (saliva) screening test or a breath alcohol screening test with the result of a 0.02 or greater, that

- provides quantitative data of alcohol concentration. For controlled substance testing, “Confirmation (or Confirmatory) Test” means a second analytical procedure to identify the presence of a specific controlled substance or metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy. (49 C.F.R. 382.107).
10. **Controlled Substance.** Means those substances identified in 49 C.F.R. 40.85. Marijuana, amphetamines, opioids (including heroin), phencyclidine (PCP), cocaine and any of their metabolites are included within this definition. (49 C.F.R. 382.107; 49 C.F.R. 40.85).
  11. **Department of Transportation (DOT).** Means the United States Department of Transportation.
  12. **DHHS.** Means the Department of Health & Human Services or any designee of the Secretary, Department of Health & Human Services. (49 C.F.R. 40.3).
  13. **Disabling Damage.** Means damage which precludes departure of a motor vehicle 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 so driven. Disabling damage 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 tail light damage or damage to turn signals, horn or windshield wipers which make them inoperative. (49 C.F.R. 382.107).
  14. **Driver.** Means any person who operates a commercial motor vehicle. This includes, but is not limited to, full-time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers and independent owner-operator contractors who are either directly employed by or under lease to the County or who operate a commercial motor vehicle at the direction of or with the consent of the County. For purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle. (49 C.F.R. 382.107).
  15. **Drug.** Has the same meaning as controlled substance.
  16. **Employee Seeking Transfer.** Refers to an employee who is not subject to DOT regulations seeking a transfer to a position that will subject them to DOT regulations in the sought after position.
  17. **Evidential Breath Testing Device or EBT.** Means a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices.” (49 C.F.R. 40.3).
  18. **Federal Motor Carrier Safety Administration or FMCSA.** Means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.
  19. **Medical Review Officer or MRO.** Means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by a controlled substance testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his/her medical history and any other relevant biomedical information. (49 C.F.R. 40.3).
  20. **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. (49 C.F.R. 382.107).

21. **Positive Test Result.** Means a finding of the presence of alcohol or controlled substance, or their metabolites, in the sample tested in levels at or above the threshold detection levels established by applicable law.
22. **Reasonable Suspicion.** Means a belief a driver has engaged in conduct prohibited by the FMCSA controlled substance and alcohol testing regulations, except when related solely to the possession of alcohol, based on specific contemporaneous, articulable observations made by a supervisor or County official who has received appropriate training concerning the appearance, behavior, speech, or body odors of the driver. The determination of reasonable suspicion will be made in writing on a Reasonable Suspicion Record Form during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this policy. In the case of a controlled substance, the observations may include indications of the chronic and withdrawal effects of a controlled substance.
23. **Safety-Sensitive Function.** Means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:
  - a. All time at a County facility or other property, or on any public property
  - b. Waiting to be dispatched, unless the driver has been relieved from duty by the County.
  - c. All time inspecting equipment as required by 49 C.F.R. 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
  - d. All time spent at the driving controls of a commercial motor vehicle in operation.
  - e. 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 49 C.F.R. 393.76).
  - f. 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.
  - g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle (49 C.F.R. 382.107).
24. **Screening Test (a/k/a Initial Test).** In alcohol testing, means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his/her system. Screening tests may be conducted by utilizing a non-evidential screening device included by the National Highway Traffic Administration of its conforming products list (saliva screening device), or an evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). In controlled substance testing, "Screening Test" means an immunoassay screen to eliminate "negative" urine specimens from further consideration. (49 C.F.R. 382.107).
25. **Substance Abuse Professional, or SAP.** Means a licensed physician (medical doctor or doctor of osteopathy), licensed or certified psychologist, licensed or certified social worker, licensed or certified employee assistance professional or licensed or certified addiction counselor (certified by the National Association of Alcoholism and Controlled Substance Abuse Counselors Certification Commission) with the knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders (49 C.F.R. 40.281).



**APPENDIX A  
DRUG AND/OR ALCOHOL TESTING CONSENT FORM  
EMPLOYEE AGREEMENT AND CONSENT TO  
DRUG AND/OR ALCOHOL TESTING**

I hereby agree, upon a request made under the drug/alcohol testing policy of Itasca County, to submit to a drug or alcohol test and to furnish a sample of my urine, breath, and/or blood for analysis. I understand and agree that if I at any time refuse to submit to a drug or alcohol test under Itasca County policy, or if I otherwise fail to cooperate with the testing procedures, I will be subject to immediate termination. I further authorize and give full permission to have Itasca County and/or its physician to send the specimen or specimens so collected to a laboratory for a screening test for the presence of any prohibited substances under the policy, and for the laboratory or other testing facility to release any and all documentation relating to such test to Itasca County and/or to any governmental entity involved in a legal proceeding or investigation connected with the test. Finally, I authorize Itasca County to disclose any documentation relating to such test to any governmental entity involved in a legal proceeding or investigation connected with the test.

I understand that only duly-authorized Itasca County employees, and agents will have access to information furnished or obtained in connection with the test; that they will maintain and protect the confidentiality of such information to the greatest extent possible; and that they will share such information only to the extent necessary to make employment decisions and to respond to inquiries or notices from government entities.

I will hold harmless Itasca County, its physician, and any testing laboratory Itasca County might use, meaning that I will not sue or hold responsible such parties for any alleged harm to me that might result from such testing, including loss of employment or any other kind of adverse job action that might arise as a result of the drug or alcohol test, even if an Itasca County or laboratory representative makes an error in the administration or analysis of the test or the reporting of the results. I will further hold harmless Itasca County, its physician, and any testing laboratory Itasca County might use for any alleged harm to me that might result from the release or use of information or documentation relating to the drug or alcohol test, as long as the release or use of the information is within the scope of this policy and the procedures as explained in the paragraph above.

This policy and authorization have been explained to me in a language I understand, and I have been told that if I have any questions about the test or the policy, they will be answered.

I UNDERSTAND THAT ITASCA COUNTY WILL REQUIRE A DRUG SCREEN AND/OR ALCOHOL TEST UNDER THIS POLICY WHENEVER I AM INVOLVED IN AN ON-THE-JOB ACCIDENT OR INJURY UNDER CIRCUMSTANCES THAT SUGGEST POSSIBLE INVOLVEMENT OR INFLUENCE OF DRUGS OR ALCOHOL IN THE ACCIDENT OR INJURY EVENT, AND I AGREE TO SUBMIT TO ANY SUCH TEST.

[

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee's Name - Printed

\_\_\_\_\_  
Itasca County Representative

\_\_\_\_\_  
Date

**APPENDIX B  
EMPLOYEE DRUG AND/OR ALCOHOL TEST REFUSAL FORM**

EMPLOYEE NAME: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

NAME OF PERSON REQUESTING TESTING: \_\_\_\_\_

**REASON FOR TESTING:**

<input type="checkbox"/> RANDOM	<input type="checkbox"/> RETURN-TO-DUTY
<input type="checkbox"/> REASONABLE SUSPICION	<input type="checkbox"/> FOLLOW-UP
<input type="checkbox"/> PRE-EMPLOYMENT	<input type="checkbox"/> POST-ACCIDENT

**ACKNOWLEDGEMENTS:**

1. I acknowledge that I was given Itasca County's Drug and Alcohol Testing for Commercial Driver's Policy.
2. I acknowledge that I have the right to refuse to undergo drug and/or alcohol testing.
3. I understand that my refusal to submit to drug and/or alcohol testing will affect my employment status as stated in this policy.
4. I acknowledge that if I refuse to submit to drug and/or alcohol testing that has been requested, no such test shall be given.
5. I further understand that if I were to consent to such drug and/or alcohol testing that I would have the opportunity to indicate any over-the-counter or prescription medications that I currently am taking or have recently taken and any other information relative to the reliability of, or explanation for, a positive test result.

**REFUSAL:**

It is my considered decision to refuse to submit to drug and/or alcohol testing.

\_\_\_\_\_  
Employee/Applicant's Signature

\_\_\_\_\_  
Witness

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX C**  
**ITASCA COUNTY PRE-EMPLOYMENT DRUG/ALCOHOL TEST REQUIREMENT FOR**  
**CANDIDATES REQUIRED TO POSSESS A COMMERCIAL DRIVER LICENSE**

**D.O.T. DRUG AND ALCOHOL TESTING PROGRAM**

**PURPOSE:** Certain job classifications require possession of a commercial license at the time of hire. DOT regulations and County policy require a pre-employment/post-offer drug and alcohol test to be administered to these candidates. The County DOT Medical Review Officer (MRO) must confirm a negative finding prior to hire. This form documents the consent of the candidate to be drug tested as required by federal law.

**DEPARTMENT INSTRUCTIONS:** This consent form must be signed by the applicant prior to a pre-employment drug/alcohol test. The applicant cannot be hired until the County Human Resources Department reports a written negative MRO finding to the department. After hire, the employee must undergo training and enrollment into the County DOT program **prior** to performing DOT safety sensitive duties. The original of this signed consent form shall be retained in the Human Resources Department DOT personnel file for documentation of new hire DOT test requirements, training/enrollment and verification of employment.

Candidate Name: _____ (Last name) (First Name) ( M.I.)	
Social Security Number: _____	
Commercial Driver License/Permit Number _____	
<b>Candidate Consent:</b> My signature indicates that I consent to a mandatory pre-employment drug/alcohol test as required by Federal Department of Transportation regulations, CFR 382 seq., and County policy. I understand that I will be removed from employment consideration if a positive test is reported for controlled substances; CFR 40.21, marijuana, cocaine, opiates, amphetamines, and phencyclidine. I also understand that I will be removed from employment consideration for failing to cooperate with the testing process, delay or obstruction of the testing process, or attempting to alter, substitute, adulterate, or otherwise tamper with the urine sample or other testing procedures.	
Candidate Signature _____	<b>Date</b> _____

Human Resources witness to signature of candidate:	
_____	Title: _____

**APPENDIX D**

**General Consent for Limited Queries of the Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Clearinghouse**

I, \_\_\_\_\_, hereby provide consent to Itasca County to conduct a limited query of the FMCSA Commercial Driver’s License Drug and Alcohol Clearinghouse (Clearinghouse) to determine whether drug or alcohol violation information about me exists in the Clearinghouse.

I understand that this consent will remain active for any number of limited queries throughout the length of my employment.

I understand that if the limited query conducted by Itasca county indicates that drug or alcohol violation information about me exists in the Clearinghouse, FMCSA will not disclose that information to Itasca County without first obtaining additional specific consent from me. I further understand that if I refuse to provide consent for Itasca County to conduct a limited query of the Clearinghouse, Itasca County **must** prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA’s drug and alcohol program regulation

\_\_\_\_\_  
**Employee Signature**

\_\_\_\_\_  
**Date**

**APPENDIX E**  
**FINAL AND LAST CHANCE AGREEMENT IN LIEU OF ITASCA COUNTY'S FEDERAL**  
**DRUG AND ALCOHOL TESTING PROGRAM – ACTION PLAN FOR SAFETY-SENSITIVE**  
**DISQUALIFIED DRIVERS**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and among all Unions and Associations, (hereinafter "Union" or "Association"), Itasca County (hereinafter "Employer"), and \_\_\_\_\_ (hereinafter "Employee"). For and in consideration of the mutual promises contained herein, the parties acknowledge and agree as follows:

- A. The Employee has been employed by Employer as \_\_\_\_\_ (position) since \_\_\_\_\_ (date of hire).
- B. An essential requirement of Employee's position is possession of a Class "A" commercial driver's license/privilege.
- C. Employee is obligated to notify Employer as soon as Employee knows driver's license has been revoked and/or the State of Minnesota has cancelled or disqualified driving privileges. On or about \_\_\_\_\_ Employee received notice of the revocation of his/her driver's license and/or driving privileges in the State of Minnesota in connection with criminal charges of driving under the influence of alcohol as more fully set forth in the Complaint with attached police reports, a copy of which is attached hereto and made a part here of as Exhibit 1.
- D. The Employer maintains that the Employee is now unable to perform the essential functions of his/her position and that the loss of his/her Class "A" commercial driver's license/privilege constitutes grounds for removal for just cause under the terms of the existing Labor Agreement between Employer and Union/Association.
- E. The Employee admits that possession of a Class "A" commercial driver's license/privilege is an essential requirement of this position and admits the loss of his/her Class "A" commercial driver's license/privilege. The Employee admits that he/she is not competent to perform the duties of his/her position and that his/her immediate removal is justified. The Employee has required that the Employer give him/her one last and final chance to retain his/her employment.
- F. The Employer is willing to allow Employee an opportunity to avoid permanent removal but is unwilling to consider Employee for return to work to his/her present position until such time as the Employee has:
1. Obtained appropriate treatment.
  2. Has provided evidence that he/she has successfully met all terms and conditions of the prescribed treatment plan.
  3. Has successfully completed a defensive driving course within seventy-five (75) days of signing this agreement.
  4. Has successfully completed all other necessary steps as required by the State of Minnesota, the Federal Department of Transportation or other regulatory authority to reinstate his/her Class (A) commercial driver's license/privilege.
  5. Has in fact had his/her Class "A" commercial driver's license/privilege reinstated. The Union/Association and Employee agree to accept the laborer (salary grade three (3))

job assignment as set forth below and waive any rights to contest the laborer (salary grade three (3)) job assignment in further proceedings.

- G. If upon fulfilling Item F above, the Employee returns to employment in his/her present position, the Employee shall be entitled to economic and fringe benefits under the existing Labor Agreement, as modified by the terms of this Agreement. However, the Employee will be monitored, as described below, at the Employer's will for the duration of the Employee's employment, including the period he/she is in the laborer (salary grade three (3)) job assignment and any time served in another position. If the Employee violates the recommendations of the treatment professional or sustains another suspension, revocation, cancellation, disqualification or other loss of his/her Class "A" commercial driver's license/privilege, all parties agree such violations or suspension, revocation, cancellation, disqualification or other loss of his/her Class "A" driver's license/privilege shall be considered just cause for dismissal. If the Employee violates the terms and conditions of this Agreement, all parties agree that such violation shall be considered just cause for dismissal.
- H. If the Employee completes the terms and conditions of this Agreement, this action shall not constitute a final disciplinary action. However, the Employer reserves the right to use this incident as part of the Employee's disciplinary history in any future disciplinary matters.

ACCORDINGLY, and in consideration of the mutual promises contained herein, the parties do hereby further agree:

- A. In lieu of permanent removal, provided the Employee has submitted evidence of successfully meeting all terms and conditions of the prescribed treatment plan and has a driver's license or work permit, the Employee will be placed in the laborer (salary grade three (3)) job assignment pursuant to approval by the County Board per the Collective Bargaining Agreement until \_\_\_\_\_. The County will continue employment as a laborer (salary grade three (3)) for up to one (1) year from the date the driver's license/privilege is suspended, revoked or cancelled and/or Class "A" commercial driver's license/privilege is disqualified. Extension of employment as a laborer (salary grade three (3)) beyond one year shall be considered by the County Board for a period not to exceed six (6) months. The Employee will be required to report to the initial assigned work location at his/her own expense. The Field Maintenance Coordinator shall assign work location.
- B. Convictions resulting in the loss of a driver's license/privilege or commercial driver's license/privilege of more than one (1) year will result in termination of the employee.
- C. Employee will be allowed to use sick leave for the time the Employee is participating in an in-treatment or out-treatment program and has provided evidence that he/she has successfully met all terms and conditions of the Employee's treatment plan. Family Medical Leave Act (FMLA) may run concurrently with earned leave used and that meets the definition of "serious health condition." During any period of time during which the Employee is receiving eligible earned leave (vacation, comp time, floating holiday, sick leave) while away from work due to loss of Class "A" commercial driver's license/privilege, Employee will not earn benefits and Employee's seniority shall be suspended.
- D. Employee will be responsible to provide completed timesheets to the Supervisor within the timeframe outlined by the Employee Timekeeping Policy, or within the timeframe otherwise established by the Payroll Department for the individual situation. Timesheets not received

within the timeframe outlined by the Employee Timekeeping Policy or otherwise established by the Payroll Department, will result in no payment of wages or payroll deductions made. Employee will be responsible to consult with the Payroll Department for the appropriate amounts due for the payroll deductions. (AT THE TIME OF PUTTING TOGETHER A FINAL AND LAST CHANCE AGREEMENT FOR AN EMPLOYEE, CHECK WITH THE PAYROLL DEPARTMENT ON THE TIMEFRAME FOR TIMESHEETS).

- E. the Employee shall obtain appropriate chemical dependency treatment as recommended by a chemical dependence assessment professional and shall grant Employer permission via the Informed Consent (Appendix E) Reason to communicate with Employee's Treatment Provider and Probation Officer for the purpose of determining whether Employee is successfully completing those items necessary to secure reinstatement of the Employee's Class "A" commercial driver's license/privilege and fulfilling the recommended treatment plan.
- F. The Employee shall be entitled to exercise any layoff rights as set forth in the Labor Agreement in the event of layoff but shall not be permitted to return to work in his/her regular position until the conditions of the Last Chance Agreement have been fully met.
- G. During any unpaid leave of absence the Employee is eligible to participate in the Employer's medical/hospital plan, dental and life insurance benefits as required by law provided that the Employee pays for both the Employer's and Employee's share of the cost of these benefits. The Employee agrees that should he/she fail to pay for the benefit coverage prior the first day of each month (AT THE TIME OF PUTTING TOGETHER A FINAL AND LAST CHANCE AGREEMENT FOR AN EMPLOYEE, CHECK WITH THE PAYROLL DEPARTMENT ON THIS DATE), Employee will be removed from the medical/hospital plan, dental and life insurance benefits and Employee's coverage cancelled immediately.
- H. Employee and the Union/Association agree that Employee's reinstatement to his/her regular position is made specifically conditional and at the Employer's discretion, and that any failure of compliance with the conditions imposed upon the Employee by this Agreement shall be considered just cause for removal. Under such a circumstance, the Employee and Union/Association agree that the only issue that may be grieved is the existence of the evidence upon which the Employer's decision to remove Employee is based. It being agreed that the evidence is sufficient cause for removal and that removal (termination from employment) is the appropriate remedy.
- I. It will be the Employer's right and decision to fill or not fill positions with temporary workers, hired directly by the Employer or through a temporary service agency, vacated by disqualified drivers due to the circumstances described above. Employee and Union/Association waive the right to grieve or petition Itasca County for unit determination(s) with regards to the Employer filling positions with temporary workers.
- J. The parties agree that this Agreement shall not be construed or in any way used as precedent for any other present or future matter involving other employees of the Employer. The parties acknowledge this Agreement is in response to the totally unique circumstances of this case, and, as such, is of no precedential value to others. By entering into this Agreement the Employer does not intend to create a past practice.

K. The recitals contained herein form a part of, and are to be construed as part of, this Agreement.

IN WITNESS WHEREOF, the parties executed this FINAL AND LAST CHANCE AGREEMENT on the day and year shown above.

COUNTY OF ITASCA

UNION/ASSOCIATION

BY: \_\_\_\_\_  
County Board Chair

BY: \_\_\_\_\_  
Its: \_\_\_\_\_

BY: \_\_\_\_\_  
County Administrator

BY: \_\_\_\_\_  
Employee



**APPENDIX F  
ITASCA COUNTY DRUG AND ALCOHOL TESTING FOR COMMERCIAL DRIVERS  
INFORMED CONSENT**

I, \_\_\_\_\_, provide my informed consent granting Itasca County representatives (fill in authorized names) \_\_\_\_\_ )

permission to communicate with my Chemical Dependence Treatment Provider (fill in name and phone number) \_\_\_\_\_ 49 CFR 40.3.:

\_\_\_\_\_ and Probation Officer (fill in name and phone number) \_\_\_\_\_ for the purpose of determining whether I am successfully completing those items necessary to secure reinstatement of my Class "A" commercial driver's license/privilege and fulfilling the recommended treatment plan.

This release is effective as of \_\_\_\_\_ and valid through \_\_\_\_\_

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

**APPENDIX G  
ITASCA COUNTY DRUG AND ALCOHOL TESTING FOR COMMERCIAL DRIVERS  
REASONABLE SUSPICION REPORT FORM**

**INSTRUCTIONS:** Observers should complete parts A – C and sign part D. The completed Reasonable Suspicion Report forms are to be filed with the Human Resources Director or his/her designee.

**PART A:**

Employee Name: \_\_\_\_\_ Employee ID #: \_\_\_\_\_

Job Title: \_\_\_\_\_ Department: \_\_\_\_\_

Date of Occurrence: \_\_\_\_\_ Time of Occurrence: \_\_\_\_\_

Specific Location of Occurrence: \_\_\_\_\_

**PART B:**

Place a check (✓) to identify definition of reasonable suspicion that applies to this occurrence and complete all requested information pertaining to that definition.

1. Direct observation of the physical symptoms or manifestations that suggest the employee may be under the influence of drugs and/or alcohol while on duty. Check all items which describe the behavior observed.

**Speech**

- \_\_\_\_\_ Normal
- \_\_\_\_\_ Incoherent
- \_\_\_\_\_ Confused
- \_\_\_\_\_ Slurred
- \_\_\_\_\_ Whispering
- \_\_\_\_\_ Silent
- \_\_\_\_\_ Loud
- \_\_\_\_\_ Rapid
- \_\_\_\_\_ Cursing
- \_\_\_\_\_ Slowed
- \_\_\_\_\_ Other & Specify

**Balance – Motor Skills**

- \_\_\_\_\_ Normal
- \_\_\_\_\_ Staggering
- \_\_\_\_\_ Swaying
- \_\_\_\_\_ Falling
- \_\_\_\_\_ Other & Specify

**Eyes**

- \_\_\_\_\_ Normal
- \_\_\_\_\_ Redness/Bloodshot
- \_\_\_\_\_ Pupils Dilated
- \_\_\_\_\_ Pupils Constricted
- \_\_\_\_\_ Other & Specify

**Appearance**

- \_\_\_\_\_ Normal
- \_\_\_\_\_ Disheveled
- \_\_\_\_\_ Flushed
- \_\_\_\_\_ Puncture Marks
- \_\_\_\_\_ Inappropriate
- Wearing sunglasses
- \_\_\_\_\_ Dry Mouth

**Walking & Turning**

- \_\_\_\_\_ Normal
- \_\_\_\_\_ Motor Skills
- \_\_\_\_\_ Stumbling
- \_\_\_\_\_ Swaying
- \_\_\_\_\_ Arms Raised for Balance
- \_\_\_\_\_ Other & Specify

**Awareness**

- \_\_\_\_\_ Normal
- \_\_\_\_\_ Confused
- \_\_\_\_\_ Sleepy
- \_\_\_\_\_ Paranoid
- \_\_\_\_\_ Mood Swings
- \_\_\_\_\_ Euphoria
- \_\_\_\_\_ Disoriented

\_\_\_\_\_ Profuse sweating  
\_\_\_\_\_ Runny nose/sniffing  
\_\_\_\_\_ Tremors  
\_\_\_\_\_ Body Odor  
\_\_\_\_\_ Other & Specify  
\_\_\_\_\_

\_\_\_\_\_ Lack of Coordination  
\_\_\_\_\_ Lethargic  
\_\_\_\_\_ Other & Specify  
\_\_\_\_\_

Other Observed Actions or Behaviors. Please specify. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Were there others who witnessed the behavior? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, identify the witnesses: \_\_\_\_\_

Quote any remarks, admissions, inappropriate language, etc. made by the employee that may be pertinent to his/her condition.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe any possible signs of chronic or withdrawal effects of drug use.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Direct observation of drug and/or alcohol use while on duty. Did you observe drug or alcohol use by the employee while at work or on duty? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, describe what you observed:  
\_\_\_\_\_  
\_\_\_\_\_  
Date and time of observation: \_\_\_\_\_  
Location where observation took place: \_\_\_\_\_  
Witnesses: \_\_\_\_\_

3. Report of drug or alcohol use while at work or on duty, provided by a reliable and credible source and which has been independently corroborated.  
Name of Source: \_\_\_\_\_ Title: \_\_\_\_\_  
Reason for believing source is reliable and credible: \_\_\_\_\_  
Nature of independent corroboration: \_\_\_\_\_

4. Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs and/or alcohol while on duty or on County premises, or while operating any County vehicle, machinery or equipment. Describe the evidence relied upon:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**APPENDIX H  
FEDERAL DRUG AND ALCOHOL TESTING PROGRAM**

It is the Policy of Itasca County, to comply with the Federal DOT Regulations, Part 40, relating to the drug and alcohol testing program for safety-sensitive functions.

The Itasca County Board of Commissioners have approved the following action plan, effective as of 8/1/05, amended 11/27/12, for all Itasca County safety-sensitive employees, who, as a part of the qualifications of their job, must have a current and valid commercial driver's license (CDL):

1. **Safety Sensitive Non-Supervisory Employees:** If a regular employee has their driver's license or privilege suspended, revoked, or canceled and/or the CDL or privilege is disqualified but the employee is then issued a limited license and prior to determination of first conviction, the employee will be assigned work as a laborer (salary grade three (3)) and/or participating in all terms and conditions of the prescribed treatment plan and has a driver's license or work permit. The employee will be required to report to the initial assigned work location at his/her own expense. The County will continue employment as a laborer (salary grade three (3)) for up to one year the driver's license is suspended, revoked or cancelled and/or CDL is disqualified, whichever occurs first. Extension of employment as a laborer (salary grade three (3)) beyond one year shall be considered by the Itasca County Board of Commissioners for a period not to exceed six (6) months. These terms are not grievable.
  
2. **Safety-Sensitive Supervisory Employees:** If a regular employee has their driver's license or privilege suspended, revoked, or cancelled and/or the CDL or privilege is disqualified but the employee is issued a limited license and prior to determination of first conviction, the employee will remain in their supervisory position provided the employee has submitted evidence of successfully meeting and/or participating in all terms and conditions of the prescribed treatment plan and has a Minnesota driver's license or work permit unless they are required to have an ignition interlock system. If the employee is required to have an ignition interlock system, he/she will be assigned work as a laborer (salary grade three (3)) and will be required to report to the assigned work location at his/her own expense. Extension of employment as a laborer (salary grade three (3)) beyond one (1) year shall be considered by the Itasca County Board of Commissioners for a period not to exceed six (6) months. These terms are not grievable.
  
3. **THEN:**

<b>DISQUALIFICATION OF DRIVERS: If a driver operates a motor vehicle and is convicted of.....</b>	<b>For a first conviction or refusal to be tested while operating a CMF, a person required to have a CDL, and a CDL holder will be...</b>	<b>For a first conviction or refusal to be tested while operating a Non-CMF, a CDL holder will be...</b>
Being under the influence of alcohol, as prescribed by state law...	Terminated from his/her position with Itasca County	Terminated from his/her position with Itasca County unless the employee and Union enter into a Final and Last Chance Agreement

Being under the influence of a controlled substance...	Terminated from his/her position with Itasca County	Terminated from his/her position with Itasca County
Having an alcohol concentration of 0.04 or greater while operating a CMV...	Terminated from his/her position with Itasca County	Not applicable
Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in MS 383.72 of this part...	Terminated from his/her position with Itasca County	Terminated from his/her position with Itasca County
Leaving the scene of an accident...	Terminated from his/her position with Itasca County	Terminated from his/her position with Itasca County
Using the vehicle to commit a felony, other than a felony described in this table...	Terminated from his/her position with Itasca County	Terminated from his/her position with Itasca County
Driving a CMV when, as a result of prior violations, committed operating a CMV, the driver's CDL is revoked, suspended, or cancelled, or the driver is disqualified from operating a CMF...	Terminated from his/her position with Itasca County	Not applicable
Causing a fatality through the negligent operations of a CMF, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide...	Terminated from his/her position with Itasca County	Not Applicable
Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance...	Terminated from his/her position with Itasca County	Terminated from his/her position with Itasca County
<p><b>DISQUALIFICATION OF DRIVERS:</b>  <b>If a driver operates a motor vehicle and is convicted of.....</b></p> <p>Being under the influence of alcohol, as prescribed by State law</p>		<p><b>For a second conviction or refusal to be tested while operating a Non-CMF, a CDL holder will be...</b></p> <p>Terminated from his/her position with Itasca County</p>

<b>DISQUALIFICATION FOR SERIOUS TRAFFIC VIOLATIONS:</b> <b>If the driver operates a motor vehicle and is convicted of...</b>	<b>For a second conviction of any combination of offenses in this table, in a separate incident within a three (3) year period while operating a CMV, a person required to have a CDL, and a CDL holder must be disqualified from operating a CMV for...</b>	<b>For a second conviction of any combination of offenses in this table, in a separate incident within a three (3) year period while operating a Non-CMV, a CDL holder must be disqualified from operating a CMV for...</b>	<b>For a third or subsequent conviction of any combination of offenses in this table in a separate incident within a three (3) year period, while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...</b>	<b>For a third or subsequent conviction of any combination of offenses in this table in a separate incident within a three (3) year period, while operating a Non-CMV, a CDL holder must be disqualified from operating a CMV for...</b>
Speeding excessively, involving any speed of 24.1 (15 mph) or more above the posted speed limit...	60 days...	60 days...	120 days...	120 days...
Driving recklessly, as defined by State or local law or regulation, including, but not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property...	60 days...	60 days...	120 days...	120 days...
Making improper or erratic traffic lane changes...	60 days...	60 days...	120 days...	120 days...
Following the vehicle ahead too close...	60 days...	60 days...	120 days...	120 days...
Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident...	60 days...	60 days...	120 days...	120 days...
Driving a CMV without	60 days...	Not applicable	120 days...	Not applicable

obtaining a CDL...				
*Driving a CMV without a CDL in the drivers possession...	60 days...	Not applicable	120 days...	Not applicable
Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported...	60 days	Not applicable	120 days...	Not applicable
Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving...	60 days...	Not applicable	120 days...	Not applicable

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<b>DISQUALIFICATION FOR RAILROAD HIGHWAY GRADE CROSSING OFFENSES:</b> <b>If the driver is convicted of operating a CMV in violation of a Federal, State or local law because...</b>	<b>For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...</b>	<b>For a second conviction of any combination of offenses in this table in a separate incident within a three (3) year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...</b>	<b>For a third or subsequent conviction of any combination of offenses in this table in a separate incident within a three (3) year period, a person required to have a CDL and a CDL holder must be disqualified from operating CMV for...</b>
The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train...	No less than 60 days...	No less than 120 days...	No less than one (1) year...
The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear...	No less than 60 days...	No less than 120 days...	No less than one (1) year...
The driver is always required to stop, but fails to stop before driving onto the crossing...	No less than 60 days...	No less than 120 days...	No less than one (1) year...
The driver fails to have sufficient space to drive completely through the crossing without stopping...	No less than 60 days...	No less than 120 days...	No less than one (1) year...
The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing...	No less than 60 days...	No less than 120 days...	No less than one (1) year...
The driver fails to negotiate a crossing because of insufficient undercarriage clearance...	No less than 60 days...	No less than 120 days...	No less than one (1) year...

<b>DISQUALIFICATION FOR VIOLATING OUT-OF-SERVICE ORDERS:</b> <b>If the driver operates a CMV and is convicted of...</b>	<b>For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...</b>	<b>For a second conviction in a separate incident within a ten (10) year period while operating a CMV, a person required to have a CDL, and a CDL holder, must be disqualified from operating CMV for...</b>	<b>For a third or subsequent conviction in a separate incident within a ten (10) year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating CMV for...</b>
Violating a driver or vehicle out-of-service order while transporting non-hazardous materials...	No less than 180 days or more than one (1) year...	No less than two (2) years or more than five (5) years...	No less than three (3) years or more than five (5) years...
Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under Part 172, Subpart F of Title 383.51, or while operating a vehicle designed to transport sixteen (16) or more passengers, including the driver...	No less than 180 days or more than two (2) years...	No less than three (3) years or more than five (5) years...	No less than three (3) years or more than five (5) years...

**APPENDIX I  
ITASCA COUNTY DRUG AND ALCOHOL TESTING FOR COMMERCIAL DRIVERS  
POLICY ACKNOWLEDGEMENT**

I have received a copy of the Itasca County Drug and Alcohol Testing for Commercial Drivers Policy and have been provided information on the following:

1. The person(s) designated by Itasca County to answer questions about these materials.
2. Who is subject to alcohol misuse and controlled substance requirements.
3. Explanation of a safety-sensitive function.
4. What driver conduct is prohibited.
5. Circumstances for drug and/or alcohol testing.
6. Procedures used to test for the presence of drugs and/or alcohol.
7. The requirement that employees submit to controlled substance and alcohol testing.
8. An explanation of what constitutes a refusal to submit to testing.
9. The consequences for drivers violating the prohibitions of this rule, including the immediate removal of the driver from safety-sensitive functions.
10. The consequences for drivers found to have an alcohol concentration level of 0.02 or greater, but less than 0.04.
11. Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life. Signs and symptoms of an alcohol or controlled substances problem and available methods of intervening when an alcohol or a controlled substance problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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**ITASCA COUNTY  
BOARD OF COMMISSIONERS**

Itasca County Courthouse  
123 NE 4th Street  
Grand Rapids, MN 55744

**VII.9.**

Tuesday, January 7, 2020

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**REQUEST FOR BOARD ACTION: RBA-2020-6**

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**DEPARTMENT:** Human Resources

**TIME REQUESTED:** < 5 Minutes

**PRESENTER:** Lynn Hart

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**AGENDA ITEM:**

Itasca County Drug and Alcohol Testing Policy For Commercial Drivers

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**BOARD ACTION REQUESTED:**

Approve the updated Itasca County Drug & Alcohol Testing Policy for Commercial Drivers.

**BACKGROUND:**

This policy was formerly titled Safety-Sensitive Employee Drug & Alcohol Policy. We have updated the title and have updated the policy to include the new United States Department of Transportation (DOT) Federal Motor Carrier Safety Administration Clearinghouse regulations which become effective on January 6, 2020 and include a nationwide clearinghouse data base for drug & alcohol violations.

**COUNTY ATTORNEY REVIEW:**

**SUPPORTING DOCUMENTATION:**

1. DRUG AND ALCOHOL TESTING POLICY FOR COMMERCIAL DRIVERS

<b>RESULT:</b>	<b>APPROVED (4 TO 0)</b>
<b>MOVER:</b>	Commissioner Terry Snyder
<b>SECONDER:</b>	Commissioner Burl Ives
<b>AYES:</b>	Terry Snyder, Leo Trunt, Burl Ives, Ben DeNucci
<b>ABSENT:</b>	Davin Tinquist