



## Drug & Alcohol Testing Policy 2.04

Board Approval Date: 01-05-2021

Supersedes Policy Dated: 01-03-1995

### POLICY STATEMENT

This policy applies only to Winona County employees whose job duties include operating a commercial motor vehicle and are required to hold a commercial driver's license. Our goal is to provide a safe workplace for employees, customers and general public by maintaining a drug and alcohol free workplace. This policy is established to address the use of drugs and alcohol, including testing for drugs and alcohol as mandated by Title 49 CFR Part 382.

Participation in the drug/controlled substances and alcohol testing program is a requirement of each employee, and therefore, is a condition of employment. Employees are strictly prohibited from using, possessing, selling, transferring, transporting, or being under the influence of drugs or alcohol while working, performing job duties, while on the employer's premises, or while operating the employer's vehicles or equipment. Any employee found to be in violation of this policy is subject to disciplinary actions, up to and including termination of employment.

### COVERAGE AND APPLICABILITY

Employees who operate commercial motor vehicles that require a commercial driver's license under 49 CFR Part 383 are subject to the Federal Motor Carrier's Safety Administration's (FMCCSA) drug and alcohol use and testing regulations 49 CFR Part 382.

Applicants, including persons currently employed by Winona County, that apply for a position where job duties include operating commercial motor vehicles, will be required to submit to a pre-employment drug test if a conditional job offer is made.

### DEFINITIONS

The following shall define the terms as used in this policy. In the event conflict should arise between the definitions of terms herein and the definitions of those in Department of Transportation (DOT) rules, regulations, interpretations or guidance, the definitions herein shall be deemed superseded and the DOT rules, regulations, interpretations or guidance shall control.

**Accident** means an occurrence involving a Commercial Motor Vehicle (CMV) operating on a public road which results in:

1. A fatality; or,
2. Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or,
3. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.



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**Actual knowledge** means actual knowledge by Winona County that a driver has used alcohol or controlled substances based on Winona County's direct observation of the driver, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or a controlled substance, or a driver's admission of alcohol or controlled substance use under the provisions of Sec. 382.121. Direct observation as used in this definition means observation of alcohol or controlled substance use and does not include observation of driver behavior or physical characteristics sufficient to warrant reasonable suspicion testing under Sec. 382.307.

**Adulterated Specimen** means a specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.

**Alcohol Concentration** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an alcohol test conducted under 49 CFR Part 40.

**Alcohol Confirmation Test** means a subsequent test using EBT, following a screening test with a result of 0.02 or greater that provides quantitative data about the alcohol concentration.

**Alcohol Screening Device (ASD)** means a breath or saliva device, other than an Evidential Breath Testing Device (EBT), that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on the Office of Drug & Alcohol Policy & Compliance's (ODAPC) web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications of NHTSA.

**Alcohol Screening Test** means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

**Alcohol Use** means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication) containing alcohol.

**Breath Alcohol Technician (BAT)** means a person who instructs and assists employees in the alcohol testing process and operates an Evidential Breath Testing Device (EBT).

**Chain of Custody** means a procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).



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**Collection site** means a place designated by Winona County where individuals present themselves for the purpose of providing a urine specimen for a drug test.

**Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse)** means the FMCSA database that 49 CFR Part 382, subpart G requires employers and service agents to report information to and to query drivers who are subject to the DOT controlled substance and alcohol testing regulations.

**Commercial Motor Vehicle (CMV)** means a motor vehicle or combination of motor vehicles used to transport passengers or property if the vehicle:

1. Has a gross combination weight rating (GCWR) of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight rating (GVWR) of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers including the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, (49 USC 5103(b)) and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

**Confirmation (or confirmatory) drug test** means a second analytical procedure performed on a different sample of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

**DHHS** is the Department of Health and Human Services or any designee of the Secretary of the Department of Health and Human Services.

**Dilute Specimen** means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

**Disabling Damages** means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

1. *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
2. *Exclusions.*
  - a) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
  - b) Tire disablement without other damage even if no spare tire is available.
  - c) Headlight or taillight damage.



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- d) Damage to turn signals, horn or windshield wipers which make them inoperative.

**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. All “drivers” are “employees” for purpose of this policy.

**Drugs (or Controlled Substances)** means the substance for which laboratories are required to test for under 49 CFR Part 40 and FMCSA regulations as each may be amended from time to time.

**Employee** means any person who is designated in a DOT Agency regulation as subject to drug testing and/or alcohol testing. For purposes of drug testing, the term employee has the same meaning as the term “donor” does in connection with Custody and Control Forms and Department of Health and Human Service regulations and guidance.

**Evidential Breath Testing Device (EBT)** means a device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentration, and appears on ODAPC’s Web page for “Approved Evidential Breath Measurement Devices” because it conforms to the model specifications available from NHTSA.

**FMCSA** is the Federal Motor Carrier Safety Administration.

**Initial Drug Test (also known as a screening drug test)** means the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolite.

**Licensed medical practitioner** means a person who is licensed, certified, and/or registered, in accordance with applicable federal, state, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

**Medical Review Officer (MRO)** means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by Winona County’s drug testing program and evaluating medical explanations for certain drug test results.

**Negative return-to-duty test result** means a return-to-duty test with a negative drug test result and/or and alcohol test with an alcohol concentration of less than 0.02 as described in 49 CFR Part 40.305.

**Random selection** means a mechanism for selection of employees for testing where each



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employee has an equal chance of being selected each time selections are made.

**Reasonable suspicion** means that Winona County believes the appearance, behavior, speech, etc. of an employee are indicative of the use of a drug or alcohol based on the observation of at least one supervisor or official who has received training in the identification of behaviors indicative of drug and/or alcohol use.

**Safety sensitive function** means 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 responsibility for performing work. Safety-sensitive functions shall include:

1. All time at Winona County facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by Winona County;
2. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations, or otherwise inspecting, servicing, or conditioning any CMV at any time;
3. All time spent at the driving controls of a CMV in operation;
4. All time, other than driving time, in or upon any CMV except time spent resting;
5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
6. All time spent performing the driver requirements on the Federal Motor Carrier Safety Regulations relating to accidents;
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**Screening Test Technician (STT)** means anyone meeting the requirements for a BAT that may act as a Screening Test Technician, provided that the individual has demonstrated proficiency in the operation of non-evidential screening device.

**Service Agent or Third Party Administrator** means any person or entity, other than an employee of Winona County, who provides services specified under this part to Winona County and/or employees in connection with DOT drug and alcohol testing requirements.

**Substance Abuse Professional (SAP)** means a person who evaluates employees who have violated a DOT alcohol and drug regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

**Substituted Specimen** means a specimen with creatinine and specific gravity values that are so



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diminished that they are not consistent with human urine.

### **RESPONSIBILITIES**

It is Winona County's responsibility to provide testing for drivers that is in compliance with all federal and state laws and regulations, and within the provisions of this policy. Winona County will retain all records related to this testing.

The supervisor(s) of drivers is responsible to make reasonable suspicion observations to determine if the driver is impaired in some way, and be prepared to implement the requirements of this policy if necessary.

The driver is responsible for complying with the requirements set forth in this policy. The driver will not use, have possession of, abuse, or have the presence of alcohol or any controlled substance in excess of regulation-established threshold levels while on duty. The driver will not use alcohol within four (4) hours prior to performing a safety-sensitive function, while performing a safety-sensitive function, or immediately after performing a safety-sensitive function, or as required under post-accident testing. The driver must submit to alcohol and controlled substances tests administered under Part 382.

The driver is responsible to inform their supervisor of any prescription medication use which may have an effect on their driving ability prior to performing a safety-sensitive function. The driver may be required to present written evidence from a health care professional which describes the effects such medications may have on the driver's ability to perform safety-sensitive functions. Winona County reserves the right to seek additional opinions from qualified medical personnel concerning the potential effects of the prescribed medication on a driver's ability to perform safety-sensitive functions, and to prohibit a driver from performing safety-sensitive functions while they are taking prescription medications. Any such prohibition will be without prejudice and the driver will be allowed to return to duty upon ceasing use of the medication or when Winona County determines safety-sensitive duties will not be affected upon review of sufficient information, provided by qualified medical personnel.

### **PROHIBITED DRUG AND ALCOHOL RELATED CONDUCT**

The following alcohol and drug related activities are prohibited by the FMCSA for operators of Commercial Motor Vehicles:

1. Reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
2. Being on duty or operating a CMV while possessing alcohol, unless that alcohol is manifested as a part of a shipment. This includes the possession of medicines



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- containing alcohol (prescription or over the counter), unless the package seal is unbroken.
3. Using alcohol while performing safety-sensitive functions.
  4. Performing safety sensitive duties within four (4) hours of using alcohol.
  5. When required to submit a post-accident test, using alcohol within eight (8) hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
  6. Refusing to submit to an alcohol or drug test required by post-accident, random, reasonable cause, return to duty, or follow up testing requirements.
  7. Reporting for duty or remaining on duty, requiring the performance of safety-sensitive functions, when the driver uses any drug, except when instructed by a licensed medical professional who has advised the driver that the substances do not adversely affect the driver's ability to operate a CMV.
  8. Reporting for duty, remaining on duty, or performing a safety-sensitive function after testing positive for drugs.

### OTHER ALCOHOL RELATED CONDUCT

FMCSA rules require that in the event of an alcohol test result equal or greater than 0.02 BAC, but less than 0.04 BAC, the employee will not be permitted to perform safety-sensitive duties for a minimum of 24 hours.

### TYPE OF TESTING REQUIRED

**PRE-EMPLOYMENT TESTING (Sec. 382.301):** All applicants, including people currently employed by Winona County, applying for a job where duties include operating a CMV, are required to submit to pre-employment testing for drugs, if a job offer is made. The offer is contingent upon all of the following:

1. A negative result of the drug test.
2. The applicant's written agreement authorizing all former employers to release to the employer all information about the applicant concerning the following items within the last three (3) years:
  - a) alcohol tests with result of 0.04 BAC or greater:
  - b) positive test results for drugs:
  - c) refusals to be tested:
  - d) any SAP referrals or evaluations.
3. The receipt of acknowledgements from all former employers in a manner satisfactory to Winona County indicating that none of the items referenced in number two (2) above have occurred with respect to the applicant.
4. Verification that applicant has submitted electronic consent through the Commercial Driver's License Drug and Alcohol Clearinghouse granting access to the applicant's



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Clearinghouse records to determine whether the driver:

- a) Has a verified positive, adulterated, or substituted controlled substances test result;
  - b) Has an alcohol confirmation test with a concentration of 0.04 or higher;
  - c) Has refused to submit to a test in violation of §382.211;
  - d) That an employer has reported actual knowledge, as defined at §382.107;
  - e) That the driver used alcohol on duty in violation of §382.205;
  - f) That the driver used alcohol before duty in violation of §382.207;
  - g) That the driver used alcohol following an accident in violation of §382.209;
  - h) That the driver used controlled substance in violation of §382.213.
5. Completion of a successful query of the Commercial Driver's License Drug and Alcohol Clearinghouse indicating that none of the items referenced in number four (4) above have occurred with respect to the applicant.

**POST-ACCIDENT TESTING (Sec. 382.303):** If a driver is involved in an accident, the driver shall immediately notify their Supervisor. The driver is subject to post-accident testing if the accident involved:

1. A fatality;
2. Bodily injury with immediate medical treatment away from the scene;
3. Disabling damage to any motor vehicle requiring tow away: or
4. The driver receiving a citation.

The driver may also be subject to post-accident testing at the discretion of the supervisor without meeting the above listed reasons.

The driver will be tested for drugs and alcohol as soon as possible following the accident. The driver must remain readily available for testing. If the driver isn't readily available for alcohol and drug testing, the driver may be deemed as refusing to submit to testing. A driver involved in an accident may not consume alcohol for eight (8) hours or until testing is completed.

If the alcohol test is not administered within two (2) hours following the accident the Designated Employer Representative will prepare a report and maintain a record stating why the test was not administered within two hours.

If the alcohol test is not administered within eight (8) hours following the accident, all attempts to administer the test will cease. The Designated Employer Representative will prepare a report and record of why the test was not administered.

The drug test must be administered within 32 hours of the accident. If the test could not be administered within 32 hours, all attempts to test the driver will cease. The Designated Employer





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Representative will prepare and maintain a record stating the reasons why the test was not administered within 32 hours.

**RANDOM TESTING (Sec 382.305):** Random testing will be spread reasonably throughout the calendar year. All random alcohol and drug tests will be unannounced, with each driver having an equal chance of being tested each time selections are made. The selection of drivers for random alcohol and controlled substances testing will be made by a scientifically valid method as described in Sec. 382.305(i). At least the minimum percent of the average number of driver positions as required by FMCSA will be tested each year.

A driver may be tested for alcohol while performing a safety-sensitive function, just before performing a safety-sensitive function, or just after completing a safety-sensitive function.

The driver must proceed immediately to the assigned collection site when notified of being randomly selected for testing.

**REASONABLE SUSPICION TESTING (Sec. 382.307):** If the driver's supervisor or another official designated to supervise drivers believes a driver is under the influence of alcohol or drugs, the driver will be required to undergo a drug and/or alcohol test. Reasonable suspicion alcohol testing is only authorized if the observations are made during, just preceding, or after the driver is performing a safety-sensitive function.

The basis for requiring testing will be specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. A written record of the observations leading to an alcohol or controlled substance reasonable suspicion test, signed by the supervisor or official who made the observation, will be completed within 24 hours of the observed behavior or before the results of the alcohol or controlled substances test are released, whichever is first.

The driver's supervisor or another official will immediately remove the driver from any and all safety-sensitive functions and take the driver or make arrangements for the driver to be taken to a testing facility.

If an alcohol test is not administered within two hours following a reasonable suspicion determination, the program administrator will prepare and maintain a record stating the reasons why the test was not administered within two (2) hours. If the test was not administered within eight (8) hours after a reasonable suspicion determination, all attempts to administer the test shall cease. A record of why the test was not administered must be prepared and maintained.

**RETURN-TO-DUTY TESTING (Sec 382.309):** An employee found to have violated this policy who is allowed by Winona County to return to safety-sensitive functions shall not return



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to work until undergoing return-to-duty drug and/or alcohol tests indicating an alcohol concentration of less than 0.02 and/or a confirmed negative result for use of drugs. As required by 49 CFR Part 40 all return-to-duty drug test specimens will be collected under direct observation.

**FOLLOW-UP TESTING (Sec. 382.311):** An employee found to have violated this policy who is allowed by Winona County to return to safety-sensitive functions shall be subject to unannounced follow-up tests for the use of alcohol and/or drugs as directed by the SAP. As required by 49 CFR Part 40 all follow-up drug test specimens will be collected under direct observation.

### TESTING PROCEDURES

Testing shall be conducted in accordance with 49 CFR Part 40 and any published guidance, interpretation or amendments. If conflict arises between the procedure described below and the currently effective provisions of 49 CFR Part 40, the currently effective provision shall control.

**DRUG TESTING PROCESS:** Drug testing is conducted by analyzing an employee's urine specimen. Laboratory analysis of specimens consists of testing for the following classes of drugs at the cutoff levels determined by DOT:

1. Amphetamines/Methamphetamines
2. Cocaine
3. Opioids
4. Phencyclidine
5. THC (marijuana, hashish, etc.)

In accordance with FMCSA regulations, the urine specimens will be collected using the split sample collection method. The employee will provide a urine sample at a Winona County designated collection site. The collection site personnel will then pour the sample into two sample bottles, labeled "primary" and "split", seal the specimen bottles, complete the chain of custody form (CCF), and prepare the specimen bottles for shipment to the testing laboratory for analysis. The specimen preparation shall be conducted in sight of the employee.

Once the specimen is received by the testing laboratory, the laboratory will inspect the specimen bottles and the CCF for the presence of any fatal or correctable flaws. The laboratory will then conduct the initial testing on the specimen to determine if the specimen contains sufficient quantity of any drug to warrant further testing. The testing laboratory will also conduct validity testing on the specimen to determine whether certain adulterants or foreign interfering substances are present in the urine, if the urine was diluted, or if the specimen was substituted.



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If the results of the initial drug test are negative, no further testing will be conducted. If the results of the initial drug test are positive, the laboratory will perform a confirmation testing on the specimen for each of the substances identified in the initial test. The results of any confirmation tests will be the laboratory's final test result.

Drug test results are reported directly to the MRO by the testing laboratory. The MRO reviews the laboratory results, verifies the results, and then reports the results directly to Winona County. If the laboratory results are negative, the MRO performs an administrative review only. If the laboratory's test result is confirmed positive, adulterated or substituted the MRO performs an administrative review and interviews the employee in order to provide an opportunity to explain the test result. The MRO will contact the employee directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. The MRO will determine whether a legitimate medical explanation exists to explain the laboratory result. If no legitimate medical explanation is offered for the laboratory's test result the MRO shall verify the test results as positive for drugs, or as a refusal to test because of adulterated or substituted and report the results to Winona County.

The MRO shall notify each employee that the employee has 72 hours in which to request a test of the split specimen. If the employee requested an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct the laboratory, in writing, to transfer the split specimen to another DHHS-SAMHSA (Substance Abuse and Mental Health Services Administration) certified laboratory for analysis. If the employee has not contacted the MRO within 72 hours, the employee may present the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely making contact. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact him or her within 72 hours, the MRO will direct the analysis of the split specimen.

If after making reasonable efforts and documenting those efforts, the MRO is unable to reach the employee directly, the MRO must contact Winona County, who shall direct the employee to contact the MRO.

The MRO may verify a test positive without having communicated directly with the employee about the test results under the following circumstances:

1. The employee expressly declines the opportunity to discuss the test results.
2. Neither the MRO nor Winona County is able to reach the employee within ten (10) days of the date on which the MRO received the test result from the laboratory.
3. The employee has not contacted the MRO within 72 hours of being instructed to do so by Winona County.



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### Special Urine Specimen Collection Situations

#### *The Observed Collection*

In most circumstances the employee will provide the urine specimen in a private enclosure. However, in limited situations the employee is required to be observed while providing the required urine specimen. A direct observation collection is required in the situations listed below:

1. For all Return-to-Duty Follow-up drug tests;
2. If the collector observes materials brought to the collection site or if the employee's conduct clearly indicates an attempt to tamper with a specimen;
3. If the employee provides a specimen with a temperature out of range;
4. If the employee provides a specimen that appears to have been tampered with;
5. If the laboratory reported to the MRO that a specimen was invalid, and the MRO reported to Winona County that there was not an adequate medical explanation for the result, the employee must submit a second specimen under direct observation;
6. If a positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed, then the employee must submit a second collection under direct observation; and
7. If the laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2mg/dL but less than or equal to 5 mg/dL, then the employee must submit to a second collection under direct observation.

In an observed collection, a person of the same gender will accompany the donor into the urination area to observe the urination process. The observer is required to direct the donor to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer, by turning around, that the donor does not have a prosthetic device. The observer must then watch the donor urinate into the collection container. Specifically the observer must watch the urine go from the donor's body into the collection container.

#### *Employee is unable to provide sufficient specimen*

If the employee is unable to provide the appropriate quantity of urine, the collection site person will instruct the employee to drink up to 40 ounces of fluids distributed over a period of up to three (3) hours or until the employee has provide a sufficient sample. If the employee is still unable to provide a complete sample, the test shall be discontinued and Winona County notified. The employee will be instructed to obtain, within five (5) working days, an evaluation from a licensed physician acceptable to the MRO to determine if the employee's inability to provide a specimen is genuine or constitutes a refusal to test.



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**TESTING LABORATORY:** All drug testing will be conducted by a laboratory certified by DHHS-SAMHSA to perform drug testing for DOT regulations. The laboratory shall be chosen by the employer or its service agent.

**ALCOHOL TESTING PROCESS:** The FMCSA alcohol test rules require alcohol screening tests to be administered by a breath alcohol technician (BAT) using an evidential breath testing device (EBT) or alcohol screening device (ASD); or by a screening test technician (STT) using an ASD. The technician will first administer an alcohol screening test. Any result less than 0.02 alcohol concentration is considered a “negative” test. If the alcohol concentration is 0.02 or greater a second test, an alcohol confirmation test, must be performed. The alcohol confirmation test must be conducted on an EBT administered by a BAT. The test must be conducted within 15–30 minutes of the alcohol screening test. The results of the alcohol confirmation test will be the final test result. If the employee attempts and fails to provide an adequate amount of breath, Winona County will direct the employee to obtain written evaluation from a licensed physician to determine if the employee’s inability to provide a breath sample is genuine or constitutes a refusal to submit to testing. Alcohol test results are reported directly to Winona County.

### REFUSAL TO SUBMIT TO TESTING

An employee subject to this policy shall have refused to submit to testing when he/she:

1. Fails to appear for a test after being directed to do so by Winona County;
2. Fails to remain at the test site until the test is completed;
3. Fails to provide a urine specimen for a required drug test or fails to attempt to provide a breath or saliva specimen for a required alcohol test;
4. Fails to permit the direct observation or monitoring of the provision of his/her urine specimen for drug test when required by DOT regulations;
5. Fails to provide a sufficient amount of urine or breath for a drug or alcohol test and it has been determined through a medical evaluation that there was not adequate medical explanation for the failure;
6. Fails or declines to take a second test that Winona County or collector has directed the employee to take;
7. Fails to undergo a medical examination as directed by the MRO as part of the result verification process or as directed by Winona County as part of the DOT required insufficient specimen procedure;
8. Fails to sign the certification statement at Step 2 on the Alcohol Testing Form (for an alcohol test);
9. Fails to cooperate with any part of the testing process (e.g. refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector);



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10. For an observed collection, fails to follow the observer's instructions to raise clothing above waist, lower clothing and underpants, and turn around to permit the observer to determine if the donor has any type of prosthetic or other device that could be used to interfere with the collection process;
11. Possesses or wears a prosthetic or other device that could be used to interfere with the collection process;
12. Admits to the collector or MRO that he/she adulterated or substituted the specimen;
13. Has a test result that is verified by the MRO as adulterated or substituted.

**CONSEQUENCES OF REFUSAL TO SUBMIT TO TESTING:** An applicant who refuse to submit to a drug and alcohol test shall be disqualified from further consideration for the conditionally offered position.

An employee who refuses to submit to an alcohol and/or drug test required by this policy will not be permitted to perform safety-sensitive functions and will be considered insubordinate which will result in immediate termination from employment.

**ADULTERATED/SUBSTITUTED SPECIMENS:** Any applicant or employee who submits a specimen which the MRO verifies and reports to be an adulterated or substituted specimen will have refused to submit to testing.

**DILUTED SPECIMENS:** Any specimen submitted by an applicant or employee which the MRO verifies and reports as a POSITIVE diluted specimen will be treated as a verified positive test.

Any applicant or employee who submits a specimen which the MRO verifies and reports as a NEGATIVE diluted specimen will be directed to immediately take another test. The test of any second test conducted shall be the final test result.

### **EMPLOYEE/APPLICANT RIGHTS TO A SPLIT SAMPLE TEST**

All applicants and employees subject to the drug testing provisions of this policy that receive a confirmed positive test result for the use of drugs, have the right to request, at employee or applicant expense, a confirming retest of the split urine sample.

If the confirming retest is negative, no adverse action will be taken against the employee, and an applicant will be considered for employment.

### **DISCIPLINE**

Any person found to be in violation of this policy is subject to discipline up to and including



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dismissal. Nothing in this policy limits or restricts the right of Winona County to discipline or discharge an employee for conduct which violates Winona County's policies or procedures.

Winona County will not consider an applicant for employment who receives a verified positive test result.

### **CONSEQUENCES TO EMPLOYEES ENGAGING IN PROHIBITED CONDUCT**

Employees who have engaged in prohibited conduct are subject to the following consequences according to FMCSA rules:

1. The employee will be immediately removed from safety-sensitive functions;
2. The employee will not be permitted to perform safety-sensitive functions;
3. The employees will be referred to a SAP and advised by Winona County of the resources available to him/her in evaluating and resolving problems associated with the misuse of alcohol and/or the use of drugs;
4. If Winona County retains the employee, the employee must complete an initial evaluation by a SAP who will determine what assistance the employee needs in resolving problems associated with alcohol misuse and/or drug use;
5. The SAP will make a recommendation for education or treatment and refer the employee to an appropriate educational or treatment program;
6. The employee must complete a follow-up evaluation with the SAP to determine if the employee has successfully carried out the SAP's educational or treatment recommendations;
7. If the SAP believes any ongoing services are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duty, the employee must comply with these recommendations and Winona County or its agent may monitor and document the employee's participation in the recommended services;
8. Before the employee will be allowed to return to performing of a safety-sensitive functions, he/she must undergo a return-to-duty testing. If the conduct involved the use of alcohol, the employee must submit to an alcohol test with a result indicating breath alcohol level of less than 0.02. If the conduct involved the use of drugs, the employee must submit to a drug test with a verified negative test result received;
9. The employee shall also be subject to unannounced follow-up alcohol and/or drug testing.



## **Drug & Alcohol Testing Policy 2.04**

Board Approval Date: 01-05-2021

Supersedes Policy Dated: 01-03-1995

### **CONFIDENTIALITY/RECORDKEEPING**

All driver alcohol and controlled substance test records are considered confidential (Sec. 382.401). For the purpose of this policy/procedure, confidential recordkeeping is defined as records maintained in a secure location with controlled access.

Driver alcohol and controlled substance test records will only be released in the following situations (Sec. 382.405):

1. To the driver, upon his/her written request;
2. Upon request of a DOT agency with regulatory authority over Winona County;
3. Upon request of state or local officials with regulatory authority over Winona County;
4. Upon request by the United States Secretary of Transportation;
5. Upon request by the National Transportation Safety Board (NTSB) as part of a crash investigation;
6. Upon request by subsequent employers upon receipt of a written request by a covered driver;
7. To the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results). Additionally, Winona County may disclose information in criminal or civil actions in accordance with 49 CFR § 40.323(a)(2);
8. Upon written consent by the driver authorizing the release to a specified individual.

### **COMMERCIAL DRIVER'S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE REPORTING REQUIREMENT**

As required by 49 CFR Part 382, Subpart G, the following information will be reported to the Commercial Driver's License Drug and Alcohol Clearinghouse:

1. A verified positive, adulterated, or substituted drug test result;
2. An alcohol confirmation test with a concentration of 0.04 or higher;
3. A refusal to submit to a drug or alcohol test;
4. Winona County's report of actual knowledge of, as defined at 49 CFR §382.107:
  - a) On duty alcohol use pursuant to 49 CFR §382.205;
  - b) Pre-duty alcohol use pursuant to 49 CFR §382.207;
  - c) Alcohol use following an accident pursuant to 49 CFR §382.209;
  - d) Drug use pursuant to 49 CFR §382.213;
5. A SAP's report of the successful completion of the return-to-duty process;
6. A negative return-to-duty test; and
7. Winona County's report of completion of follow-up testing.





## Drug & Alcohol Testing Policy 2.04

Board Approval Date: 01-05-2021

Supersedes Policy Dated: 01-03-1995

### TRAINING AND ASSISTANCE

**Driver Education and Training (Sec. 382.601):** All drivers will be given information regarding the requirements of Part 382 and this policy by the Personnel Department or their supervisor.

**Training for Supervisors (Sec. 382.603):** Winona County shall ensure all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

**Referral, Evaluation, and Treatment (Sec. 382.605):** A list of substance abuse professionals will be provided to all drivers who fail an alcohol test or test positive for drugs. According to FMCSA regulations, prior to returning to duty, a driver must be evaluated by a SAP and must complete the treatment recommended by the SAP. Successful completion of a return to duty test and all follow-up tests is mandatory. All costs associated with referral, evaluation, and treatment is the sole responsibility of the driver/employee.

**EMPLOYEE ASSISTANCE PROGRAM:** Winona County has in place a formal Employee Assistance Program (EAP) to assist employees with addressing serious personal or work related problems at any time. The County's EAP provides confidential, cost-free, short-term counseling to employees and their families. Employees who have an alcohol or other drug abuse problems are encouraged to seek assistance before a problem affects their employment status. Employee Assistance Programs are available through Sand Creek Group Ltd. at 1-800-550-6248 or [www.sandcreekeap.com](http://www.sandcreekeap.com)

### DESIGNATED EMPLOYER REPRESENTATIVE (DER)

The DER will coordinate the implementation, direction, and administration of the alcohol and drug testing policy for Winona County. The DER is the individual employed and identified by Winona County as able to receive communications and test results from service agents and is authorized to take immediate actions to remove employees from safety-sensitive duties and make required decisions in the testing and evaluation process. Employee questions concerning this policy should be directed to the DER.

Our Designated Employer Representative is:

Maureen L. Holte  
Assistant County Administrator/Personnel Director  
507-457-6352



## **Drug & Alcohol Testing Policy 2.04**

Board Approval Date 01-05-2021:

Supersedes Policy Dated: 01-03-1995

### **MISCELLANEOUS**

Winona County retains the right to modify this policy to conform to changes in regulation or law.

This policy is not intended to alter the at-will nature of employee's employment with Winona County and shall not be construed to create any contract for, or promise of, continued employment.



## Drug & Alcohol Testing Policy 2.04

Board Approval Date: 01-05-2021

Supersedes Policy Dated: 01-03-1995

### APPENDIX A

### TO

### CDL DRUG AND ALCOHOL POLICY

#### Driver Acknowledgement of Receipt of Winona County Policy

I, \_\_\_\_\_, acknowledge that I have received a copy of the Winona County Drug and Alcohol Testing Policy 2.04. I have read, understand and agree that I will abide by Winona County policies. I understand that violation of the DOT regulations and/or Winona County policies would be an act of misconduct and/or gross misconduct, and my employment could be suspended and/or terminated. I also understand that Winona County has the right to modify this policy as changes in regulation, law or otherwise determines necessary. I further acknowledge that I have voluntarily signed this document below and that my signature is evidence of my agreement to and acceptance of these terms and conditions of my employment.

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

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



**Drug & Alcohol Testing Policy 2.04**

Board Approval Date:

Supersedes Policy Dated: 01-03-1995

**APPENDIX B**

**TO**

**CDL DRUG AND ALCOHOL POLICY**

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

I, \_\_\_\_\_, hereby provide consent to Winona County to conduct limited queries 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 if a limited query conducted by Winona County indicates that drug or alcohol violation information about me exists in the Clearinghouse, FMCSA will not disclose that information to Winona County without first obtaining additional specific consent from me.

I further understand that if I refuse to provide consent for Winona County to conduct a limited query of the Clearinghouse, Winona County must prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA’s drug and alcohol program regulations.

This consent will remain in effect through the duration of my employment with Winona County and authorizes Winona County to conduct limited queries as often as needed to comply with FMCSA requirements.

\_\_\_\_\_  
Employee Printed Name

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

\_\_\_\_\_  
Date