

# NEW CASTLE COUNTY

## PERSONNEL POLICY

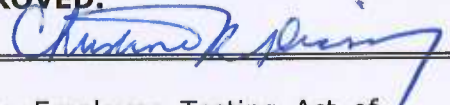
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DATE 05/19/15

**SUBJECT:** DRUG AND ALCOHOL TESTING FOR  
COMMERCIAL MOTOR VEHICLE OPERATORS

**APPROVED:**



These procedures are required by the Omnibus Transportation Employee Testing Act of 1991 and 49 C.F.R. Part 40 (the Federal Regulations).

### I. COVERAGE

1. These procedures shall apply to every employee who operates safety sensitive equipment and who is required by New Castle County to maintain a commercial driver's license (CDL) as a condition of employment.
2. These procedures shall apply to any employee who maintains a CDL and who wishes to be considered eligible for a temporary promotion (i.e. green card) to a position which requires a CDL.
3. New Castle County and the affected bargaining units shall continue to monitor Federal law changes and implement such changes as required.

### II. DEFINITIONS

1. **"Accident"** means an incident where a County employee is involved in a motor vehicle or equipment collision with persons or property in the course of his or her employment.
2. **"Alcohol"** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl and isopropyl alcohol. Note: This also includes medications that contain alcohol, either prescription or non-prescription.
3. **"Alcohol use"** means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
4. **"CDL Test Coordinator"/DER (Designated Employee Representative)** is that person(s) assigned by the Chief Human Resources Officer to coordinate the testing program and to maintain the records required by federal law regarding the implementation of the Omnibus Transportation Testing Act of 1991.
5. **"Commercial motor vehicle"** as defined by the State of Delaware, Division of Motor Vehicles, is a combination of vehicles which exceed 26,000 pounds or vehicle designed to transport 16 or more passengers including the driver, or if a vehicle is transporting hazardous materials which require placarding.
  - 5.1 **"County vehicle"** means any vehicle titled to New Castle County.

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6. **"Controlled Substances"** means drugs required by the Omnibus bill (OTETA Act of 1991) to be included in the testing process. As of January 1, 1995, these are as follows: marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines. Also includes MDMA & 6.MAM
7. **"Driver"** means any New Castle County employee with a CDL license who operates a New Castle County vehicle, including but not limited to full-time, part-time, casual, voluntary, intermittent, temporary, seasonal, or occasional.
8. **"Immediately"** means without delay.
9. **"Medical Review Officer (MRO)"** means a licensed physician (M.D. or D.O.) responsible for receiving laboratory results generated by New Castle County's drug and alcohol testing program. The MRO shall have knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate an individual's confirmed test results, together with his or her medical history and any other relevant biomedical information.
10. **"Moving Vehicle Traffic Offense Citation"** means any citation other than those relative to registration or administrative issues. Normally, all those currently in Title 21, Section 4100, inclusive of the Delaware Motor Vehicle Code.
11. **"Performing a safety-sensitive function"** means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.
12. **"Reasonable Suspicion"** means belief that the driver has or may be violating the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulated observations concerning appearance, behavior, speech, or body odors of the driver.
13. **"Refusal to submit (to an alcohol or controlled substance test)"** means a County employee who is a licensed CDL driver, after he or she has received notice of the requirement for breath testing or controlled substances testing, (1) fails to provide adequate breath for testing without prior medically certifiable explanation, (2) fails to provide adequate urine for controlled substances testing without a prior medically certifiable explanation, (3) engages in conduct that clearly obstructs the testing process, (4) refuses to submit to the required test or (5) Leaves the testing facility before finishing the test.

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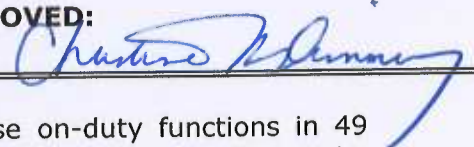
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14. **"Safety-sensitive function"** means any of those on-duty functions in 49 CFR 39.5.2 On-Duty Time, 1-7 including, but not limited to, waiting to be dispatched; inspecting, servicing, or conditioning a commercial motor vehicle; all driving time; all time in or upon any commercial motor vehicle; all time loading and unloading a vehicle; and all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
15. **"Substance Abuse Professional (SAP)"** means a licensed medical doctor or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism & Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders and has met SAP qualifying requirements.
16. **"Test Collection Site"** means that facility or facilities selected by the County to perform alcohol and/or controlled substances tests in full compliance with the OTETA Act of 1991.

### III. PROHIBITIONS

1. Alcohol concentration: No County employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater and in no case in violation of the Delaware Law, Title 21, Section 4176.
2. Alcohol possession: No County employee shall be on duty or operate a commercial motor vehicle while in possession of alcohol, unless the alcohol is manifested or transported as shipment.
3. On-duty and pre-duty use: No County employee shall use alcohol while performing safety-sensitive functions or perform safety-sensitive functions within four (4) hours after consuming alcohol.
4. Alcohol use following an accident: A driver who is subject to post accident testing (CDL qualified) shall remain readily available for such testing and shall not consume or use alcohol within eight (8) hours following the accident or until he or she undergoes the alcohol test, whichever occurs first.
5. Refusal to submit to tests: No County employee shall refuse to submit to an alcohol or controlled substance test.

5.1 Penalty: Refusal is proof of positive test results.

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6. Controlled substance use: No County employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician (and is verifiable) who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle. (Note: Burden of verifiable proof is on the employee, to the satisfaction of the employer.) No employee shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive for controlled substance as defined.

**IV. PRE-EMPLOYMENT TESTING**

1. Prior to the first time a driver performs a safety-sensitive function the driver shall undergo testing for alcohol and controlled substances.
2. Alcohol tests or controlled substance tests performed by other than New Castle County or its designee will not be acceptable as a substitute test.
3. The CDL Test Coordinator or designee shall obtain, pursuant to an applicant's consent, information on the driver's alcohol tests with a concentration result of 0.04 or greater, positive controlled substance test results, and refusals to be tested within the preceding two (2) years, which are maintained by the applicant's previous employers under the Omnibus Act.
  - 3.1 This information must be obtained and reviewed as soon as possible, and in all cases prior to the end of the probationary period. No new employee or a current employee promoted to a position requiring a CDL license can successfully complete the probationary status without this review.
4. New Castle County must provide the driver's information to other employers if requested.
  - 4.1 The release of any information under this part may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality. A written, confidential record with respect to each past or future employer contacted must be maintained.
  - 4.2 A promotional applicant who has verified positive results will not be eligible for promotion unless and until he or she has completed the substance abuse counseling and evaluation and compliance with the return to duty testing as required by the Omnibus Act. A non-County employee who has verified positive

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results during pre-employment testing will not be hired.

### V. POST-ACCIDENT TESTING FOR COMMERCIAL MOTOR VEHICLE DRIVERS

1. County employees must undergo Post-Accident Testing for alcohol and controlled substances immediately following an accident.
2. A County employee who is subject to post-accident testing shall remain readily available for such testing and shall not use alcohol within eight (8) hours following the accident or until he or she undergoes the alcohol test, whichever occurs first.
3. Following an accident which occurred while they were operating a County vehicle, the driver is required to remain at the scene.
  - 3.1 Following any accident which occurred while they were operating a County vehicle, the driver is required to ask for the local police to respond to the scene.
  - 3.2 Following any accident which occurred while they were operating a County vehicle, the driver is required to ask for his or her supervisor to respond to the scene.
    - 3.2.1 If the supervisor cannot be reached, the manager shall be asked to respond to the scene.
    - 3.2.2 If the manager cannot be reached, the CDL Testing Coordinator shall be asked to respond to the scene.
4. A driver required to go to the test collection site after an accident may not drive him or herself to the test collection site.
5. The CDL Test Coordinator shall retain documentation of the reasoning for post-accident testing.
6. Nothing in this section shall preclude an ill or injured driver from receiving essential medical attention. In such cases of illness or injury, the supervisor or CDL Test Coordinator shall apprise the medical personnel in attendance of this policy and request the appropriate testing without delay, if feasible.
7. Nothing in this section shall preclude examination, breath or blood alcohol testing, or controlled substances testing of the driver by on-site police or public safety officials under separate authority, if required by law. Results of such test may be used in lieu of post-accident testing under this policy, provided such testing complies with procedures required by local jurisdiction.

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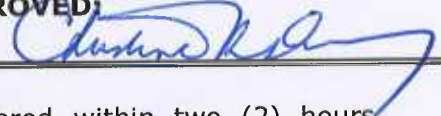
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8. If a post-accident alcohol test is not administered within two (2) hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight (8) hours, the employer shall cease attempts to administer the test and shall prepare and maintain the record listed above.
9. If a post-accident controlled substances test is not administered within 32 hours, the employer shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the controlled substances test was not administered promptly.
10. A driver whose alcohol test results are between 0.02 and 0.04 cannot perform safety-sensitive functions until the next regularly scheduled duty period, but in no event less than 24 hours after the test.

### VI. RANDOM ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR COMMERCIAL MOTOR VEHICLE DRIVERS

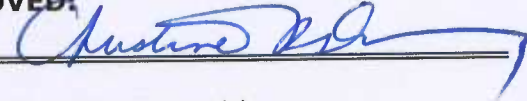
1. All drivers shall be subject to unannounced random alcohol and controlled substances tests.
2. Each general manager or designee is responsible for forwarding to the CDL Test Coordinator the name and phone numbers of the supervisor(s) responsible for CDL drivers under their command on a continuous basis as changes are made.
3. The CDL Testing Coordinator shall maintain a list of CDL drivers and supervisors with appropriate contact numbers.
  - 3.1 The average number positions with CDL requirements shall be calculated from the prior year on or about January 1 of each year. Fifty percent (50%) of this number shall determine the number of controlled substance tests that will be conducted in the next twelve months. Note: The required percentage may change but will always be based on current federal requirements.
  - 3.2 For each periodic random selection, the first drivers selected will be tested for alcohol and controlled substances. Once the federal requirement for alcohol is met, the remainder will be tested for controlled substance (currently, the federal requirement is 10% alcohol, 50% controlled substance).

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- 3.3 A random selection will be made by the Occupational Health Provider from the current list of CDL drivers.
- 4. The CDL Test Coordinator shall, on the test day, contact the department liaison who will contact the supervisor of the randomly selected driver.
  - 4.1 If a driver who is selected for a random test is on vacation, sick leave, lay off, or is on an extended medical absence, the employer shall keep the selection confidential until the driver returns, provided the driver is notified and is tested before the end of the cycle (quarter).
  - 4.2 The supervisor shall arrange for the driver to proceed to the test site IMMEDIATELY upon notification of the selected employee. Note: The selected employee is permitted to drive him or herself to the test site when randomly selected.
  - 4.3 The driver must go to the test collection site immediately, unless the driver is performing a safety-sensitive function, in which case the driver shall proceed to the site as soon as possible after ceasing to perform the function. In any case, if the selected employee is unable to report to the test collection site immediately, he or she must report at the end of their work day/shift. If the center is closed, call the on-call technician to meet the driver for drug/alcohol testing.
  - 4.4 Employees shall be paid for the time expended in a random test if they are not already being paid. Time expended begins when they leave for the site and ends when they leave the test site.
- 5. If a driver refuses to be tested, suspension of driving privileges shall be immediately in effect for this driver pending final determination by the appropriate employer authorities.
  - 5.1 Resumption of privileges shall not take place without approval of the Office of Human Resources.
    - 5.1.1 The Office of Human Resources must ensure that all federal requirements have been satisfied.
  - 5.2 A driver whose alcohol test results are between 0.02 and 0.04 cannot perform safety-sensitive functions until the next regularly scheduled duty period, but in no event less than 24 hours after the test.

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6. Supervisors, managers, and general managers may ask the CDL Test Coordinator to select additional employees for testing based on reasonable suspicion.

### VII. REASONABLE SUSPICION TESTING

1. A driver shall be subject to alcohol or controlled substances testing when there is reasonable suspicion to believe the driver has violated the prohibitions in paragraphs III (1), (3), and (5) of this policy.
2. A reasonable suspicion determination shall only be made by a supervisor that has completed the federally required training on the symptoms of alcohol or controlled substance abuse. Whenever possible, a supervisor's reasonable suspicion should be confirmed by a second duly trained designee before requiring a driver to undergo alcohol or controlled substances testing.
  - 2.1 When a supervisor, manager, or general manager has a reasonable suspicion that a CDL employee may be in violation of this policy, he or she will transport the employee to medical for the second supervisor observer confirmation. The CDL Test Coordinator or other duly trained designee will serve as a second supervisor observer.
  - 2.2 To be a "duly trained designee", the federal regulations require at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substances use before a person can be designated to determine whether reasonable suspicion exists to require a driver to undergo alcohol or controlled substances testing.
    - 2.2.1 The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.
  - 2.3 Alcohol testing is authorized only if the observations are made during, just before, or just after the period of the work day that the driver is required to be in compliance.
    - 2.3.1 If a reasonable suspicion alcohol test is not administered within two (2) hours following the observations, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight (8)