

PREFACE

TOWN OF LOS GATOS DRUG AND ALCOHOL TESTING PROGRAM PURSUANT TO THE DEPARTMENT OF TRANSPORTATION REGULATIONS

Effective January 1, 1996, the Town of Los Gatos must comply with the United States Department of Transportation regulation implementing the Federal Omnibus Transportation Employee Testing Act (OTETA) of 1991. OTETA requires the Town to establish alcohol and drug testing programs to help prevent the misuse of alcohol and drugs by drivers of commercial motor vehicles. Keeping in mind the basic objectives stated in the Town of Los Gatos Policy on the Prohibition of the Use of Alcohol and Drugs, which went into effect April 25, 1988, the Town has established the following alcohol and drug testing procedures and program in compliance with the OTETA, hereafter referred to as "the program".¹

Employees covered by this program are subject to pre-employment, cause, and random testing, and may be subject to post-accident, return-to-duty and unannounced follow-up testing. The testing procedures use an evidential breath test (EBT) device for alcohol testing. For drug testing, urine specimen collection and testing by a laboratory certified by the Department of Health and Human Services is required. If the Medical Review Officer determines that an employee has misused alcohol or drugs in violation of this program, the Town will remove the employee from safety-sensitive functions. The employee will not perform safety-sensitive functions until the employee meets the requirements established in this program which may include referral to a substance abuse professional, participation in a rehabilitation program, return-to duty testing, and/or follow-up testing.

¹This program meets the federal regulatory requirement that the Town promulgate policies and procedures on the misuse of alcohol and use of controlled substances. 59 Code of Federal Regulations section 382.60.

DEFINITIONS

Following are the definitions for the Drug and Alcohol Testing Program. This is a list of major definition areas and is not intended to be all inclusive of definition or terms.

WORD/PHRASE	DEFINITION
Alcohol	The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.
Alcohol concentration (or content)	The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.
Collection Agency	State licensed service provider that follows procedures for the collection of urine samples in a split specimen process for delivery to a toxicological laboratory for testing.
Collection site	A place where individuals present themselves for the purpose of providing breath or urine samples to be analyzed for specified alcohol or drugs.
Commercial motor vehicle (CMV)	<p>A motor vehicle or combination of motor vehicles used in commerce or transport passengers or property if the motor vehicle:</p> <ol style="list-style-type: none"> 1. Has a gross vehicle weight rating of 26,001 or more pounds; or 2. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 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 and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
Controlled substance	Drugs as deemed under this policy include marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP).
DOT	Federal Department of Transportation

WORD/PHRASE	DEFINITION
Driver	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 Town or who operate a commercial motor vehicle at the direction of or with the consent of the Town. For the purposes of pre-employment/pre-duty testing only, the term "driver" includes a person applying to the Town to drive a commercial motor vehicle.
Drug	Any substance (other than alcohol) that is a controlled substance as defined above and 49 CFR Part 40.
FHWA	The Federal Highway Administration, U.S. Department of Transportation.
Owner-Operator (s)	A driver(s) who has been contracted for services with the District. For the purposes of these procedures and the Town's Alcohol and Controlled Substances Abuse Policy, owner-operators are not to be considered employees, but will be required to participate in the Town's Alcohol and Controlled Substances Abuse Policy like all employee drivers.
Medical Review Officer (MRO)	A licensed physician accredited by the Medical Review Officers' Association National with knowledge and expertise of the clinical and medical diagnosis and treatment of alcohol and drug related disorders.

WORD/PHRASE	DEFINITION
On duty time	<p>All time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. "On duty time" shall include:</p> <ol style="list-style-type: none"> 1. All time at a Town facility or other Town property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the Town; 2. All time inspecting, servicing, or conditioning any commercial motor vehicle at any time; 3. All driving time; 4. All time, other than driving time, in or upon any commercial motor vehicle; 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 relating to accidents; 7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
Performing (a safety-sensitive function)	A driver is considered to be performing a safety-sensitive function during any period in which the driver is actually performing, ready to perform or immediately available to perform any safety-sensitive functions.
Positive Test	A test is only positive and reported to the Town when the initial screening test is positive, the confirming test is positive, and the Medical Review Officer has discussed with the employee the results of the two tests and ascertained that the tests are accurate.
Provider	Certified professional/agency contracted to provide services prescribed by this program.

WORD/PHRASE	DEFINITION
Reasonable suspicion	The Town believes the actions or appearance or conduct of a commercial motor vehicle driver who is on duty as defined below, are indicative of the use of alcohol or drugs.
Refusal to submit (to an alcohol or drug test)	A covered employee who (1) refuses to take an alcohol or drug test; (2) fails to provide adequate breath for testing without a valid medical explanation after he/she has received notice of the requirement for breath testing in accordance with FHWA regulations; (3) fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with FHWA regulations; or (4) engages in conduct that clearly obstructs the testing process. A refusal includes not providing a breath sample or urine as directed, refusing to sign appropriate control forms, not being readily available following an accident, using alcohol within eight hours of an accident, or tampering with a sample.
Safety-sensitive function	Any of those on-duty functions set forth in 49 CFR section 395.2 and as defined under "On duty time."
Split-Specimen	A division of the original urine sample that is stored by the lab when provided by the collection agency for a second test to be used when the primary test results are challenged.
Substance Abuse Professional (SAP)	A licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug related disorders.
Toxicological Laboratory	A drug abuse service laboratory licensed to perform alcohol and drug testing under the auspices of the federal government with specific expertise and chain of custody procedures, split specimen sampling, and drug/alcohol record-keeping methodologies. The agency must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary and long-term storage and transportation or shipment of the samples to a laboratory.

I. COVERED EMPLOYEES

A. Covered employees must comply with the alcohol and drug testing requirements of this program. "Covered employees" are those employees who are required to drive, or may be required to drive, or have the potential to drive, and who meet any of the three following qualifications.

1. They are required by the Town to possess a Commercial Driver's License (Class A or B) to do their jobs.
 - a. This includes all regular, probationary, temporary, and work-out-of-class assignments in job positions which require a Commercial Driver's License.
 - b. This also includes applicants to jobs with the Town which require the possession of a Commercial Driver's License.
2. They operate a commercial motor vehicle.

"Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- a. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- b. Has a gross vehicle weight rating of 26,001 or more pounds; or
- c. Is designed to transport 16 or more passengers, including the driver; or
- d. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded and over 1,000 lbs. under the Hazardous Materials Regulations.²

²49 C.F.R. part 172, subpart F.

COVERED EMPLOYEES - continued

3. They are performing safety-sensitive functions.
 - a. "Safety-sensitive function" means any of the following functions:
 - 1) All time spent at the driving controls of a commercial motor vehicle in operation;
 - 2) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
 - 3) 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;
 - 4) All time spent performing the requirements for covered employees who are involved in an accident, as further described in Section X of this program;
 - 5) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;
 - 6) All time inspecting, servicing or conditioning any commercial motor vehicle at any time.
 - b. A covered employee "performs a safety-sensitive function" during any period in which the employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.
 - c. Employees who have the required commercial license and who want to be immediately available to perform safety-sensitive functions in a temporary or work-out-of-class status, will be subject to the provisions of this program.
4. Covered employees will also include any employee who has a Commercial Driver's License where the medical examination and/or license fees are paid for by the Town.

II. GENERAL PROVISIONS FOR ALL ALCOHOL AND DRUG TESTING PROGRAMS

A. Notice to Covered Employees That Alcohol and Drug Testing is Required By Federal Law

Before performing an alcohol or drug test under this program, the Town shall notify the employee that the alcohol or drug test is required by federal law.

B. Administration of the District's Alcohol and Drug Testing Program

The Town has designated Drug Program Coordinator in the Personnel Department to answer employee questions about the Town's alcohol and drug testing program and procedures.

C. Record Retention Requirements

In compliance with the record retention requirements under the OTETA, the Town shall maintain confidential records of its alcohol and drug misuse prevention program in a secure location with controlled access. Records of positive results, documentation of refusals to take test, calibration documentation for breath testing devices, and driver evaluation and referrals shall be maintained for five years in accordance with federal law. The Town shall generate an annual calendar year summary of the results of its program, which will also be retained for five years. Records relating to the alcohol and drug collection process and training, including collection logbooks, documents relating to the random selection process, breath alcohol technician training, documents relating to reasonable cause tests, port-accident tests, and random tests, compliance, and evaluation, shall be maintained for up to five years. The Town shall prepare an annual summary by March 15 for the previous year containing specific information as to the number of covered employees, who refused to submit to tests, the number of supervisors receiving training, the covered employees, the number and types of tests given, the results, the number of covered employees who refused to submit to tests, the number of supervisors receiving training, the covered employees who returned to duty after a positive test, and other similar information.

D. Access to Records

Covered employees are entitled, upon written request to the Personnel Department to obtain copies of any records pertaining to the employee's misuse of alcohol or drugs, including any records pertaining to his or her alcohol or drug tests. The Town shall promptly provide the records requested by the employee.

GENERAL PROVISIONS - continued

Copies of or information in these records shall not be otherwise released to any other person except as follows:

1. To the Drug Program Coordinator and the Personnel Officer who require access to these records to comply with the requirements of federal law and this program;
2. To federal, state or local officials with regulatory authority over the Town or any of its covered employees and who have legitimate need for access;
3. To a decision maker in connection with a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or drug test administered under this program, or from the Town's determination that the covered employee engaged in conduct prohibited by Section III of this program; or
4. To a person identified by the covered employee in accordance with the terms of the employee's written consent authorizing such release.

E. Confidentiality and Recordkeeping

The Town desires to comply with the confidentiality and recordkeeping requirements. As such, the Town stipulates that with the exception of the Drug Program Coordinator or designee, Collection Facility, Testing Laboratory, Medical Review Officer and Substance Abuse Professional, the results of individual tests shall not be released to anyone without the expressed written authorization of the tested individual, unless ordered by means of proper legal procedure and appropriate legal authority, such as a court ordered subpoena, or in connection with a Town disciplinary, grievance or arbitration proceeding initiated by or on behalf of the individual and arising from a certified positive alcohol or drug test.

To maintain confidentiality, records pertaining to program administration, the collection process and individual test records will not be a part of the individual personnel files. A separate test records retention system will be maintained by the Drug Program Coordinator.

The records will be secured and maintained by the Drug Program Coordinator. Access to the test records is restricted to the Drug Program Coordinator and the Personnel Officer. The release to Town Management of such information from the Drug Program Coordinator, medical sources of the Medical Review Officer will

GENERAL PROVISIONS - continued

require the signed release of the employee. Unless noted, such records are permanent and are subject to examination by the Drug Program Coordinator, the Personnel Officer or their designee.

However, information related to an employee's availability for work will be provided to the employee's supervisor to insure that an employee is removed from a safety-sensitive function when necessary, accommodated in a non-safety-sensitive function, when appropriate. In the case of reasonable cause testing, the supervisor will receive the results of the alcohol and/or drug tests.

Collection and test records of employees producing negative alcohol and drug tests must be retained for one year. Collection and test records of employees producing positive alcohol tests must be retained for three years and positive drug test for five years.

The following lists of records shall be retained and maintained by the Drug Program Coordinator:

1. Supporting documents for pre-employment, post accident, reasonable cause or random testing decisions.
2. Records of the collection process to indicate specimen identification, accountability and chain of custody.
3. Any individual reports or records provided directly to the tested employee by the Medical Review Officer.
4. Records of test results and any information provided by the affected employee concerning split samples, retests, or follow-up tests.
5. Return to work test records.
6. All reports forwarded to reporting agencies.
7. Records and documents provided by the Drug Program Coordinator, Rehabilitation Agencies and any consultants.

III. PROHIBITIONS

A. It is UNLAWFUL for covered employees to do the following:

1. To perform safety-sensitive functions after a positive alcohol test result indicating a 0.04 Breath Alcohol Content or a positive drug test result, regardless of when the alcohol or drug was ingested and regardless of whether or not the employee is under the influence of alcohol or drugs;
2. Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions (See Federal Register, Section 382.201);
3. To be on duty or operate a commercial motor vehicle while the driver possesses alcohol. No employer having actual knowledge that a driver possesses alcohol may permit the driver to drive a commercial motor vehicle. (See Federal Register, Section 382.204);
4. Perform or continue to perform safety-sensitive functions with an alcohol concentration of 0.02 to 0.04 (see Federal Register, Section 382.505);
5. To use alcohol or products containing alcohol while performing safety-sensitive functions;
6. To perform safety-sensitive functions within four hours after using alcohol or products containing alcohol;
7. To use alcohol or products containing alcohol for eight hours following an accident for which the employee is required to take a post-accident alcohol test;
8. To report for duty or remain on duty and perform safety-sensitive functions when the employee is currently using a drug, unless the use of the drug is prescribed by a physician. (Employees who are taking prescribed medication that may impair their ability to perform safety-sensitive functions are advised to inform their supervisors.)
9. To refuse to submit to any of the alcohol or drug test required by OTETA (random, post-accident, reasonable cause, follow-up, return to duty test) and alcohol/drug testing rules as described in this program.

PROHIBITIONS - continued

A "refusal to submit" to an alcohol or drug test means that a covered employee:

- a. Refuses to take the test;
- b. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with this program;
- c. Fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with this program; or
- d. Engages in conduct that clearly obstructs the testing process.

B. The following drugs are specified in the law and will be analyzed during drug testing.

- a. Marijuana
- b. Cocaine
- c. Amphetamines/methamphetamines
- d. Opiates
- e. Phencyclidine (PCP)

IV. CONSEQUENCES TO ENGAGING IN ANY GENERAL PROHIBITION

Any covered employee who engages in any action prohibited by this program under Section III will be subject to the following consequences.³

- A. The employee shall be relieved from performing safety-sensitive functions.
- B. The employee shall be immediately suspended according to Section VI .
- C. The employee shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with the misuse of alcohol or drugs.
- D. After the completion of the suspension period, the employee may return to work as soon as medically certified by the MRO/SAP. The employee must, however, provide a negative test result and be certified for return to duty no later than 90 calendar days after notification of the positive test result. Failure to be certified by the MRO/SAP or return to work shall result in termination.
 - 1. The employee may use accumulated vacation, sick leave, personal leave, overtime or leave without pay while undergoing treatment/rehabilitation.
 - 2. Leave accruals may not be used for discipline such as suspension and use of catastrophic time bank will not be allowed.
 - 3. Any employee who is given an alcohol confirmation test according to 49 CFR 40.65 by the BAT and the breath alcohol concentration level is 0.02 or greater, but less than 0.04, shall be required to take leave without pay, or use vacation or personal leave but not sick leave time, until the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test. Any employee who is given an alcohol confirmation test by the BAT and the breath alcohol concentration level is 0.02 or greater, but less than 0.04, on the second time shall be suspended without pay for three regularly scheduled work days. The employee shall be referred to the SAP for evaluation and assessment of fitness for duty.

³For consequences to outside applicants, please see Section VIII (D)(4) of this program regarding pre-employment testing.

CONSEQUENCES TO ENGAGING IN ANY GENERAL PROIBITION - continued

4. Any employee who has a breath alcohol concentration level that is 0.02 or greater, but less than 0.04, on the third time within a five (5) year period will be treated as the second step in random testing.
- E. Any covered employee who refuses to submit to an alcohol or drug test required by this program shall be terminated.
- F. The Town's Drug Program Coordinator or designee will assist in advising the employee of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol or drugs, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

V. SELF-IDENTIFICATION PROCEDURE

Covered employees are encouraged to advise the Town if they are involved with the misuse of alcohol or for the use of drugs. This procedure is available only to covered employees who have not been notified of a random test, reasonable cause test or a post-accident test. This procedure cannot be used by covered employees to avoid the consequences for a positive test or a refusal to test.

PROCEDURE

If an employee self-identifies a problem with misuse of alcohol or drugs, the Town will refer the employee to an SAP. Prior to returning to a safety-sensitive position, the employee will be tested.

If the SAP determines that the employee requires participation in a rehabilitation program, the employee will be referred to his/her own medical insurance plan and/or the Town's Employee Assistance Program (EAP) the cost of which is provided by the Town. The Town is not required to pay for treatment beyond the cost of the those programs.

If an employee self-identifies a second time, it will be treated as a first incident of a positive test through random testing.

VI. PERSONNEL ACTIONS

A. Disciplinary Action for Misconduct

Any covered employee who engages in an act prohibited by Section III of this program violates federal law. Employee violations of this program may constitute misconduct under The Town of Los Gatos' Personnel Rules and Regulations, Section 12, "Disciplinary Actions" or its successor.

B. Nothing in this section shall be interpreted as interfering with the Town's right to remove from the workplace an employee who poses a direct threat to the employee or others.

C. All disciplinary action under this program is subject to the grievance procedure as contained in the appropriate current Memorandum of Understanding or in accordance with Town policy for non-represented employees.

D. The following is a guideline for disciplinary action when an employee violates the Town's alcohol and drug program. Discipline shall be based on the degree of the offense and in accordance with the following guidelines:

PERSONNEL ACTIONS - continued

E. DISCIPLINARY GUIDELINES

RANDOM TESTING	
1st Incident	<ul style="list-style-type: none"> * Counseling * Suspension (5 days) * Participate and complete rehabilitation, if necessary
2nd Incident	<ul style="list-style-type: none"> * Suspension (15 days) * "Last chance" agreement * Participate and complete rehabilitation, if necessary
3rd Incident	* Termination
POST ACCIDENT TESTING	
1st Incident	<ul style="list-style-type: none"> * Discipline (suspension or termination) dependent on seriousness of accident and/or the degree of a disregard for safety * "Last chance" agreement * Participate and complete rehabilitation, if necessary
2nd Incident	* Termination
REASONABLE SUSPICION	
1st Incident	<ul style="list-style-type: none"> * Suspension (15 days) * "Last chance" agreement * Participate and complete rehabilitation, if necessary
2nd Incident	* Termination
SELF-IDENTIFICATION	
1st Incident	<ul style="list-style-type: none"> * No discipline * Referred to SAP * Participate and complete rehabilitation, if necessary
2nd Incident	* Treated as first step of random

DISCIPLINARY GUIDELINES - continued

PROBATIONARY EMPLOYEES	
Positive Drug Test	* Termination of probation. However, at the Town's option, if an employee has status in a previous classification, the employee's probationary appointment may be terminated or the employee may remain on probation and be subject to these disciplinary guidelines depending on the severity of the case and the classification.
Positive Alcohol Test (.04 or greater)	* Termination of probation. However, at the Town's option, if an employee has status in a previous classification, the employee's probationary appointment may be terminated or the employee may remain on probation and be subject to these disciplinary guidelines depending on the severity of the facts of the case and the classification.
Positive Alcohol Test (.02 to .04)	* Referred to SAP and required to participate in rehabilitation, if necessary. Any second positive test for alcohol during probation will result in termination of probation. However, at the Town's option, if an employee has status in a previous classification, the employee may remain on probation and be subject to these disciplinary guidelines depending on the severity of the case and the classification. Any second positive test showing a result between 0.02 and 0.04 after completion of probation will be treated as the first step in the appropriate category.
OTHER FACTORS	
1.	If an employee has a second confirmed positive test from follow-up testing, the employee will be given a last chance agreement unless he/she is already on a last chance agreement at which point he/she will be terminated.
2.	If an employee is required by an SAP to participate in rehabilitation and the employee refuses to participate in the required rehabilitation program, the employee will be terminated.
3.	If an employee is required by an SAP to participate in rehabilitation and the employee fails to complete the required rehabilitation program, the employee will be terminated.
4.	If an employee refuses to be tested under this program, the employee will be terminated.

VII. DRUG AND ALCOHOL TESTING METHODOLOGY

A. Alcohol Testing

Alcohol testing shall be done based on an "evidential breath testing device" which is the testing method used by law enforcement officials in drunk driving cases. A breath alcohol technician shall explain the test to the employee being tested and properly administer the test to the employee.

B. Drug Testing

Drug testing shall be done based on a "split specimen" procedure of collecting and analyzing urine samples. The specimen taken will be divided into primary and secondary specimens. If the primary specimen test is positive, the employee shall be informed of their right to request a test of the secondary specimen by a separate laboratory or by the same laboratory, if they choose, at the employee's expense. The employee will be removed from the safety-sensitive function pending the outcome of the secondary sample test results. The employee has 72 hours within which to make the request for the secondary sample test. If the secondary test result is negative, the Town shall reimburse the employee for the cost of the secondary test and all references to the positive test will be expunged from all records. If the secondary test result is positive, the employee will be subject to the procedures in Section III of this program.

C. Chain of Custody/Confidentiality

All alcohol and drug tests required to be administered to covered employees under this program shall be conducted by the Town's service providers to ensure appropriate chain of custody and confidentiality of results.

VIII. PRE-EMPLOYMENT ALCOHOL AND DRUG TESTING

A. Preface

Before the first time safety-sensitive functions for the Town are performed, the employee or applicant shall undergo testing for alcohol and drugs. The Town shall not allow a covered employee to perform safety-sensitive functions unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than 0.02, and has received a drug test result indicating a verified negative test result.

B. Procedures

1. All regular, probationary, temporary, limited term, temporary construction, and work-out-of class assignments in job positions which require a Commercial Driver's License and the performance of safety-sensitive functions are subject to pre-employment testing.
2. All persons selected by a hiring supervisor and offered a position from an appropriate employment list for a job position requiring a Commercial Driver's License and the performance of safety-sensitive functions are subject to pre-employment testing. This section applies equally to current employees of the Town and outside applicants. The drug samples may be collected during pre-employment medical examinations and the samples will be provided to the Town certified laboratory.
3. Every job announcement and internal transfer opportunities bulletin for a position requiring a Commercial Driver's License and the performance of safety-sensitive functions will include a written statement of the alcohol and drug testing requirement as stated above.
4. Job positions which do not meet the definition of "safety-sensitive" will not be included in the pre-employment alcohol and drug testing program, nor will an unsuccessful alcohol or drug test for a safety-sensitive job class impact opportunities for employment in non-covered job classes.
5. All pre-employment alcohol and drug tests will be conducted by the Town's service providers to ensure appropriate chain of custody and confidentiality of results.

C. Exceptions to Pre-Employment Testing

1. Persons employed by the Town upon implementation of the program and

PRE-EMPLOYMENT ALCOHOL AND DRUG TESTING - continued

who are in positions requiring the possession of a Commercial Driver's License and perform safety-sensitive functions will not be required to submit to initial drug testing to continue in their jobs. Commencing on implementation of the program, all other persons who are entering into positions requiring the possession of a Commercial Driver's License and the performance of safety-sensitive functions, (for example, but not limited to, new hires, rehires, transfers, and return-to-duty from any leave of absence for 20 consecutive working days or more), shall be required to submit to pre-employment testing under this program.

2. Current employees in covered classes will not be required to submit to pre-employment testing if they have been tested within the last 12 months in their current position.
3. Current employees of the Town who wish to be eligible for temporary or work-out-of-class assignments, and have previously passed pre-employment alcohol and drug tests and agreed to remain within the pool of employees from which random testing is conducted.

D. Consequences

1. Any covered employee who tests positive on a drug test or has an alcohol test result of 0.04 Breath Alcohol Content or greater, will be removed from the safety-sensitive eligibility list and will be subject to the provisions in Section IV. The employee may, however, reapply for future safety-sensitive position with the Town.
2. If the pre-employment alcohol test result indicates an alcohol content of 0.02 or greater but less than 0.04, the employee will have the right to request retesting of the second split specimen at their expense. If the retest result is negative, the employee will be reimbursed the cost by the Town and the employee will be considered for the safety sensitive position. If the retest is positive, the employee will be removed from the safety-sensitive eligibility list and will be subject to the provisions in Section IV. The employee may, however, reapply for future safety-sensitive positions with the Town.
3. All outside applicants for positions with the Town which require the possession of a Commercial Driver's License and the performance of safety-sensitive functions must submit to pre-employment alcohol and drug testing without exception. Any applicant who has a confirmed positive test for alcohol or drugs or refuses to take the test, will not be hired.

IX. RANDOM ALCOHOL AND DRUG TESTING

A. Preface

Covered employees are required to submit to alcohol and drug testing on a random basis. Twenty-five percent of the average number of covered employee positions shall be subject to random alcohol testing in each calendar year. Fifty percent of the average number of covered employee positions shall be subject to random drug testing in each calendar year. The Town will change the minimum annual percentage testing rate in compliance with any change by the Federal Highway Administration (FHWA) Administrator to increase or decrease the annual violation rate. The FHWA annual violation rate is based on the reported rate for commercial drivers.

B. Procedures

1. The Provider shall randomly select a sufficient number of covered employees for alcohol and drug testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate established by the FHWA Administrator.
2. The Provider shall select covered employees for random alcohol and drug testing by a scientifically valid method, such as a random number table of a computer-based random number generator matched with the covered employees' Social Security numbers, Town identification numbers, or other comparable identifying number. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.
3. Random alcohol and drug tests shall be unannounced and the dates for administering random alcohol and drug tests shall be spread reasonably throughout the calendar year.
4. Each covered employee who is notified of selection for random alcohol or drug testing shall go to the test site immediately. If a notified employee is performing a safety-sensitive function, the employee shall cease to perform that safety-sensitive function and go to the testing site as soon as possible.
5. A covered employee shall only be tested for alcohol while the employee is performing safety-sensitive functions, or four hours before the employee is to perform safety-sensitive functions, or four hours after the employee has ceased performing such functions. The employee will be on Town paid time during the testing process.

RANDOM ALCOHOL AND DRUG TESTING - continued

6. A covered employee may be tested for drugs at anytime while the employee is at work for the Town.
7. The Town shall not require any covered employee to submit to a random test while the employee is off work. If a covered employee is off work, the Town will skip the employee's name and the next employee's name on the selection list will be selected and tested. The Town shall document that the employee was off work and that the employee was in the random selection pool for that cycle. If the employee's absence lasts for more than 30 days, the pre-employment testing provisions of this program shall apply.
8. Pre-trip inspections may be used for the purposes of testing for alcohol as a method of performing safety-sensitive functions. However, if the pre-trip inspection is not appropriate, the employee may be requested to perform other safety-sensitive functions (e.g., driving a truck or loading a truck) in order to comply with the requirements for alcohol testing.
9. The Town shall notify the union on a monthly basis of the names of the employees who were randomly selected for both alcohol and drug testing after the tests have been administered.

C. Consequences

1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements in Section IV and may be subject to disciplinary action under Section VI of this program if they refuse to submit to a random alcohol or drug test or if they have an alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a drug test with a verified positive test result.
2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or who has had an alcohol test with a result of 0.02 to 0.04 Breath Alcohol Content or greater shall not return to duty until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary and may be subject to the referral, evaluation, and rehabilitation requirements in Section IV of this program.

X. POST-ACCIDENT ALCOHOL AND DRUG TESTING

A. Preface

As soon as practicable following an accident, the Town shall test a surviving covered employee for alcohol and drugs, where the accident has resulted in any one of the following conditions:

1. Death of a human being.
2. Bodily injury to a person who, as a result of the accident, receives medical treatment away from the scene of the accident.
3. The covered employee received a citation or there is a high probability that the covered employee will receive a citation for a moving traffic violation arising from performance of a safety-sensitive function with respect to the accident. In the case where it is not immediately known if the above criteria is met, the employee will provide a sample and the sample will not be tested until it is determined that the criteria for post-accident testing are met.
4. At least one of the involved vehicles is required to be towed from the scene of the accident.

Following the accident, the covered employee will be tested as soon as possible, not to exceed eight hours for alcohol and thirty-two hours for drugs.

B. Procedures

1. These procedures do not supersede the procedures for Reporting of Traffic Accidents Involving Town Vehicles contained in the Town of Los Gatos' Administrative Policy Manual.
2. The covered employee shall notify his or her supervisor as soon as possible following an accident. The covered employee shall refrain from using alcohol for eight hours following the accident or until he or she undergoes a post-accident alcohol test is not required as provided below. Any employee leaving the scene of the accident without appropriate authorization prior to submitting to an alcohol or drug test or being released by the supervisor will be considered to have refused to test.
3. The supervisor at the site of an accident shall:
 - a. Attend to any emergency needs of employees, passengers,

PREFACE

TOWN OF LOS GATOS DRUG AND ALCOHOL TESTING PROGRAM PURSUANT TO THE DEPARTMENT OF TRANSPORTATION REGULATIONS

Effective January 1, 1996, the Town of Los Gatos must comply with the United States Department of Transportation regulation implementing the Federal Omnibus Transportation Employee Testing Act (OTETA) of 1991. OTETA requires the Town to establish alcohol and drug testing programs to help prevent the misuse of alcohol and drugs by drivers of commercial motor vehicles. Keeping in mind the basic objectives stated in the Town of Los Gatos Policy on the Prohibition of the Use of Alcohol and Drugs, which went into effect April 25, 1988, the Town has established the following alcohol and drug testing procedures and program in compliance with the OTETA, hereafter referred to as "the program".¹

Employees covered by this program are subject to pre-employment, cause, and random testing, and may be subject to post-accident, return-to-duty and unannounced follow-up testing. The testing procedures use an evidential breath test (EBT) device for alcohol testing. For drug testing, urine specimen collection and testing by a laboratory certified by the Department of Health and Human Services is required. If the Medical Review Officer determines that an employee has misused alcohol or drugs in violation of this program, the Town will remove the employee from safety-sensitive functions. The employee will not perform safety-sensitive functions until the employee meets the requirements established in this program which may include referral to a substance abuse professional, participation in a rehabilitation program, return-to duty testing, and/or follow-up testing.

¹This program meets the federal regulatory requirement that the Town promulgate policies and procedures on the misuse of alcohol and use of controlled substances. 59 Code of Federal Regulations section 382.60.

POST-ACCIDENT ALCOHOL AND DRUG TESTING - continued

pedestrians, etc., by requesting medical, fire and/or police assistance, and the presence of another supervisor;

- b. Take the covered employee involved in the accident aside and give the employee a direct verbal order to abstain from alcohol and drugs until after they have been tested or until after eight hours for alcohol or thirty-two hours for drugs and to stand by at the site until the supervisor has determined if the accident is one requiring a post-accident alcohol and drug test;
 - c. Evaluate the accident to determine whether a post-accident test is required under this program and document with written notes the supervisor's decision to require or to not require a post-accident alcohol and drug test.
4. If the supervisor at the site affirms that a post-accident alcohol or drug test of the covered employee is required, the supervisor shall take the following actions:
- a. The supervisor shall inform the covered employee the test is required by the OTETA. The supervisor will also explain that by refusing to take the alcohol and drug tests, the employee will be subject to the mandatory referral, evaluation and rehabilitation requirements of this program. Refusal to take the tests will subject the employee to disciplinary action in accordance with Section IV of this program.

Any employee who refuses to submit to a post-accident test as required by federal law shall be offered the opportunity to be safely transported home and placed on leave without pay until such time as the employee meets the conditions for reassignment to safety-sensitive duties under Section IV of this program. If an employee appears to be impaired, refuses the post-accident alcohol and drug test, and intends or attempts to drive home, the Town will inform the employee that it is required to notify the proper authorities. Refusal to take the test will subject the employee to disciplinary action under Section VI of this program.

- b. The supervisor shall transport the employee to the designated collection site to take the necessary tests. The supervisor shall inform the employee that they have a right to request a steward. However,

POST-ACCIDENT ALCOHOL AND DRUG TESTING -continued

the process will proceed whether or not the steward is present. The supervisor transporting the employee will stay with the employee, verify the employee's identification at the collection site and later return the employee to the employee's division or work unit.

- c. If the covered employee is injured and requires off-site treatment, the supervisor shall escort the employee to a hospital or other appropriate treatment facility. The hospital will be requested to collect the necessary specimen and provide safe-keeping until the sample is picked up by the Town collection agency.
 - d. The supervisor shall ensure that the covered employee does not perform any safety-sensitive function until the employee is cleared by the post-accident test results. This includes ensuring that neither the covered employee nor any other employee involved in the accident operates the vehicle any further. If necessary, the supervisor will move the vehicle or request another employee not involved in the accident to do so.
5. If the supervisor at the site of the accident determines that the accident does not meet the criteria for a post-accident alcohol and drug test, the covered employee may continue to perform safety-sensitive functions.
 6. If the covered employee is taken into police custody at the site of an accident and the site supervisor has affirmed that the accident is one requiring post-accident drug testing, the Town's collection agency will be requested to test the employee for alcohol and drugs.
 7. If a post- accident alcohol test is required and is not administered within two hours following the accident, the Town shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight hours, the Town shall cease attempts to administer an alcohol test and shall prepare and maintain the same record.
 8. If a post-accident drug test is required and is not administered within thirty-two hours following the accident, the Town shall cease attempts to administer a drug test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered.

POST-ACCIDENT ALCOHOL AND DRUG TESTING - continued

C. Consequences

1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements in Section IV and shall also be subject to the disciplinary consequences of Section VI of this program if they refuse to submit to a post-accident alcohol or drug test or if they have a post-accident alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a drug test with a verified positive test result.
2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or who has had an alcohol test with a result of 0.02 to 0.04 Breath Alcohol Content or greater shall not perform a safety-sensitive function until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary and may be subject to the referral, evaluation, and rehabilitation requirements in Section IV of this program.

XI. REASONABLE SUSPICION ALCOHOL AND DRUG TESTING

A. Preface

The Town shall require a covered employee to submit to an alcohol and/or drug test when the Town has reasonable suspicion to believe that the employee is under the influence of alcohol or drugs.

B. Procedures

1. The Town's decision to require a covered employee to submit to a reasonable suspicion alcohol and/or drug test shall be based on a supervisor's determination that reasonable suspicion exists that the employee is in violation of Section III of this program. The Town's determination must be based on:
 - a. Specific personal and articulable observations concerning the appearance, behavior, speech or performance of the employee; or
 - b. Violation of a safety rule, or other unsafe work incident which, after further investigation of the employee's behavior, leads the supervisor(s) to believe that alcohol or drug use may be a contributing factor; or
 - c. Other physical, circumstantial or contemporaneous indicators of alcohol or drug use.
 - d. Suspicion based solely on third party observation, violation of safety rule or unsafe work incident is not reasonable suspicion for testing. However, such suspicion may be a basis for further investigation, or for action to protect the safety of others, such as ordering the employee to stop work.
 - e. No action shall be taken against a covered employee based solely on the employee's behavior and appearance, with respect to alcohol or drug use, without a positive test.
2. The supervisor will obtain the assistance of another supervisor, when feasible, to observe and document the above behavior or factors.
3. The supervisor shall inform the employee of the facts upon which the reasonable suspicion is based, advise the employee that the supervisor wishes to question the employee about the employee's behavior or conduct on which

REASONABLE SUSPICION ALCOHOL AND DRUG TESTING - continued

the reasonable suspicion is based, and advise the employee that he or she has the right to request the presence of a steward or other representative before answering the supervisor's questions.

- a. If the employee chooses to be represented, the steward or other representative will be allowed up to one hour to arrive. If no steward or other representative is available within one hour, the supervisor should continue the procedure.
 - b. The supervisor shall request an explanation from the employee concerning the employee's behavior or conduct on which the reasonable suspicion is based. If a satisfactory explanation is not provided, the employee will be tested.
 - c. The supervisor must complete the Observation/Incident Report within one hour of the incident. The supervisor will provide a copy of the completed Observation/Incident Report to the union. A copy should be given to the steward or other representative, if present, and another sent to the union president.
4. If the employee refuses to submit to the test, the employee will be placed on leave without pay and shall be offered the opportunity to be safely transported home. The employee shall remain on leave without pay until the he/she meets the conditions for reassignment to safety-sensitive functions in Section III of this program.

If an employee appears to be impaired, refuses the reasonable suspicion alcohol and drug test, and intends or attempts to drive home, the supervisor will inform the employee that the Town is required to notify the proper authorities. An employee who has refused to submit to a post-accident test will be disciplined in accordance with Section VI of this program.

5. If the employee submits to the reasonable suspicion alcohol and/or drug test, the supervisor will assign the employee to non safety-sensitive duties until the supervisor receives the test results, unless in the supervisor's judgment, the continued presence of the employee in the workplace poses a significant safety risk to the employee or others or is disrupting the workplace. In that event, the supervisor shall place the employee on sick leave or other accrued leave and arrange to safely transport the employee home.
- a. If the alcohol and/or drug test is positive, the employee will be

REASONABLE SUSPICION ALCOHOL AND DRUG TESTING - continued

subject to the return to duty/follow-up testing program and procedures.

6. No supervisor shall physically search an employee or an employee's private property (purse, briefcase, car) based on the supervisor's reasonable suspicion that the employee has violated Section III of this program.
7. The supervisor(s) or Town official(s) who observe(s) the employee's behavior on which reasonable suspicion testing is based must have received at least 60 minutes of training on alcohol misuse and an additional 60 minutes training on drug use. The training must cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs. The supervisor who decides that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the covered employee.
8. No reasonable suspicion testing may be done except while the employee is performing a safety-sensitive function, four hours before the employee is to perform a safety-sensitive function, or four hours after the employee has ceased performing such function.
9. If an alcohol test is not conducted within two hours of the observation, the Town must prepare and maintain a record stating the reasons the alcohol test was not promptly administered. If eight hours have passed, the Town will not administer the test.
10. A written record must be made of the observations leading to an alcohol or drug reasonable suspicion test, and signed by the supervisor or Town official who made the observations, within one hour of the observed behavior or before the results of the alcohol or drug test are received, whichever is earlier.

C. Consequences

1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements in Section III and may be subject to the disciplinary consequences of Section VI of this program if they refuse to submit to a reasonable suspicion alcohol or drug test or if they have a reasonable suspicion alcohol concentration of 0.04 or greater or a drug test with a verified positive test result.
2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or has had an alcohol test with a result of

REASONABLE SUSPICION ALCOHOL AND DRUG TESTING - continued

0.02 to 0.04 Breath Alcohol Content or greater shall not perform a safety-sensitive function until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary.

XII. RETURN TO DUTY/FOLLOW-UP TESTING

A. Preface

Covered employees who have alcohol test results of 0.04 Breath Alcohol Content or greater, or who test positive for drugs are subject to return-to-duty testing and are also subject to unannounced follow-up alcohol and/or drug test following their return to duty.

B. Procedures

1. Return to duty test

- a. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or has had an alcohol test with a result of 0.04 Breath Alcohol Content or greater shall not return to duty until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary.
- b. Any covered employee who has engaged in conduct in violation of Section III concerning the use of drugs or who has had a drug test with a positive result shall not return to duty until the employee has submitted to a return to duty drug test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, of necessary.

2. Follow-up testing

- a. If an employee tests positive for either alcohol or controlled substances, he/she will be subject to unannounced follow-up alcohol and controlled substances tests following his/her return to duty. The number and frequency of such follow-up testing shall be as directed by the SAP and consist of at least six tests in the first 12 months following the employee's return to duty.
- b. Follow-up testing shall not exceed 60 months from the date of the employee's return. The SAP may terminate the requirement for follow-up testing at any time after the first six test have been administered, if the SAP determines that such testing is no longer necessary.