

***BOROUGH OF
RUMSON***

**COMMERCIAL DRIVERS LICENSES/
SAFETY SENSITIVE**

**DRUG AND ALCOHOL
TESTING POLICY**

Adopted January 1, 2018

**Municipal Excess Liability
Joint Insurance Fund
Member**

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THE BOROUGH OF RUMSON

COMMERCIAL DRIVERS LICENSES / SAFETY SENSITIVE DRUG AND ALCOHOL TESTING POLICY

PURPOSE:

The purpose of this program is to comply with federal and state statutes which require drug and alcohol testing for employees who are required to possess a Commercial Drivers License (CDL) for employment or employees who have been identified as holding a Safety Sensitive Position.

AUTHORITY:

This Policy is intended to comply with all applicable federal and state statutes which relate to regulations relating to Commercial Drivers Licensed Employees/Safety Sensitive positions, including but not limited to the following:

49 CFR, Part 40: Procedures for Transportation Workplace Drug Testing Programs

49 CFR, Part 391: Sub-part H, Controlled Substance Testing, Covering Federal Highway Administration (FHWA) and controlled drivers

Section 382.401 Federal Motor Carrier Safety Regulations 49 CFR, Part 394: Notification and Reporting of Accidents

New Jersey Motor Vehicle Commission, Commercial Driver License Manual

In an effort to insure that The Borough of Rumson complies with Department of Transportation Regulations, a drug and alcohol testing program will be in effect for all Commercial Drivers License (CDL) holders/Safety Sensitive Employees, hereinafter referred to as employees. This program will provide for pre-employment, random, post accident, reasonable suspicion, return-to-duty, and follow-up testing. The Borough of Rumson has retained an independent contractor (hereinafter referred to as the Agent) to manage and administer the testing program.

Any employee possessing a CDL, or holding a position requiring the operation of a Borough owned vehicle, who reports for work visibly impaired and is unable to properly perform required duties, will not be allowed to work. If possible, the supervisor will first seek another supervisor's opinion of the employee's status. The supervisor will subsequently consult privately with the employee about the observation. If, in the opinion of the supervisor, the employee is considered impaired, the employee will be required to be tested for alcohol and/or drugs, depending on the supervisory determination of the observed impairment. **Under no circumstances will an impaired employee be allowed to drive.**

Prescription drugs prescribed by the employee's physician or over-the-counter medications, which do not interfere with the employee's job performance, may be taken during working hours. The employee is required to notify the supervisor of the use of any properly prescribed prescription drugs or over-the-counter medication. The abuse of prescription drugs will not be tolerated.

TESTING PROCEDURES:

Federal and state laws require drug and alcohol testing for all safety sensitive employees. Required drug and alcohol testing is done by two (2) separate and distinct methods. Drug testing is done by either urinalyses or blood test and alcohol testing is done by breath testing. Below you will find explanations of how this testing will be performed.

Drug Testing:

All testing required by the Borough of Rumson will be performed in accordance with the Department of Transportation guidelines. This testing process will look for the presence of the following substances:

- Marijuana
- Cocaine
- Amphetamines
- Phencyclidine (PCP)
- Opiates
- Semi-synthetic Opioids (Hydrocodone, Oxycodone, Hydromorphone, Oxymorphone)
- Masking Agents (will be considered a positive test result)

Under no circumstances will any other tests be performed on any specimen provided by municipal employees that are not outlined in the Department of Transportation guidelines.

Drug testing shall be by urinalysis using split samples. Split sample testing requires the specimen be divided into two (2) separate bottles during the collection process. These two bottles are designated as: 1) the primary specimen, which shall contain no less than 30 ml. of urine; and 2) the "split" specimen, which shall contain no less than 15 ml. of urine. Upon arrival at the laboratory, the primary specimen will be opened and tested. In the first screening test, immunoassay techniques are used to screen urine specimens for classes of drugs. In the second or confirmation test, any positive results found in the first screening will be confirmed using the tandem technique of gas chromatography/mass spectrometry (GC/MS) which positively identifies and quantifies the presence of specific drugs. No test result will be reported by the laboratory to the Medical Review Officer (MRO) as a positive drug test result unless both the initial screening test and the confirmation test are positive.

The laboratory shall report the test results to the Medical Review Officer (MRO) who shall evaluate the chain of custody, urine custody form, and test results. If a test is reported positive by the laboratory, the MRO will interview the employee to make an independent evaluation. The MRO will report the results of a drug test to the Borough's designated representative.

Should an interview with the employee be necessary, the MRO will make two (2) attempts on consecutive business days to call the employee. Should the MRO fail to make contact, he/she shall contact the Borough's designated representative to request that the employee contact the MRO.

The Borough's designated representative shall inform the employee of the MRO's request in a confidential manner. Failure to respond within five (5) days will be noted by the MRO when positive test results are reported. If the MRO and the Borough's designated representative are unable to contact the employee, the employee may be placed on unpaid medical leave pending discipline. It is the employee's responsibility to provide a phone number at which he/she can be contacted on the chain of custody form.

Alcohol Prohibitions: This program prohibits any alcohol use that could affect performance of a safety-sensitive function, including but not limited to:

- Use while on-duty
- Use during eight (8) hours following an accident, or until he/she undergoes a post-accident test

Alcohol Testing:

The Department of Transportation Rules requires breath testing for alcohol. This testing must be done by using an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration (NHTSA). This testing can only be performed by a Breath Alcohol Technician (BAT) that is certified in the equipment being used.

Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 Alcohol in concentration is considered a "negative" test and no further testing is required. If the initial screening shows

an alcohol concentration of 0.02 or greater, a second or confirmation test is required. The confirmation test must be performed fifteen to twenty (15-20) minutes after the initial screening. During that time period the employee being tested is to remain with the Breath Alcohol Technician and must refrain from eating, drinking, smoking, or belching. After the waiting period a second breath test will be performed. The results of the second test stand and become the official test result.

If the confirmation test result shows an alcohol concentration of 0.02 or less, the official test result is negative and no action is required. If the result of the confirmation test is 0.02 or greater, action by the employer is required.

Employer responses to breathe testing results that show an alcohol concentration of 0.02 or greater are as follows:

- (1) If the tested employee's alcohol concentration is between 0.02 and 0.039 the regulations call for the removal of the driver from driving for at least twenty-four (24) hours and the employee must pass a return-to-duty test before returning to work. In the first instance of an employee's test showing between a 0.02 and 0.039 levels, the Borough agrees to pay for the follow up return-to-duty testing. On a first time removal from duty in this instance, the employee shall be allowed to utilize accrued time, i.e., sick, vacation or personal for the balance of the work day.
- (2) If the tested employee's alcohol concentration is 0.04 or higher he/she must immediately be removed from any safety-sensitive duties and be subject to disciplinary action up to and including termination. At a minimum, the employee must remain suspended without pay for five (5) days until he/she:
 - a) Has been evaluated by a Substance Abuse Professional (DOT regulations have specific guidelines for who qualifies as a Substance Abuse Professional);
 - b) Has complied with any recommended treatment; and
 - c) Has taken and passed a return-to-duty alcohol test (result must be less than 0.02). (First return-to-duty testing is done at the employer's expense.) The employee is then subject to unannounced follow-up testing. (See Follow-up Testing in this policy)

Applicants and employees are expected to report for alcohol and drug testing as required by this policy and in accordance with Borough testing procedures. Employees are to report for work with no alcohol or illegal drugs in their bodies. Any refusal to submit to alcohol breath testing or urinalysis drug testing as directed by supervisory personnel in accordance with the regulations will be considered a refusal-to-test and will require the same disciplinary action as a positive test result.

PRESCRIPTION/OVER-THE-COUNTER MEDICATION:

The appropriate use of legally prescribed drugs and nonprescription medication is NOT prohibited. However, covered employees must remove themselves from vehicle and equipment operation if they experience any adverse effects from medication or prescribed drugs, and report the situation to their supervisor. Employees are required to disclose to their supervisor the names of any prescribed medication or over-the-counter medication they are taking. Supervisors may require medical verification of the information provided by an employee.

PRE-EMPLOYMENT TESTING:

All prospective employees applying for safety sensitive positions will be required to undergo a pre-employment test for the presence of illegal drugs. Receipt by the Borough of negative test results is required prior to engaging in any safety sensitive function or an offer of employment. A positive test result will disqualify an applicant from further consideration at that time.

Failure to keep an appointment with the Agent, which was previously agreed to by both the prospective employee and the Agent, will be viewed as an attempt to elude the testing or alter its results. No further consideration for employment will be given to the prospective employee at that time.

RANDOM TESTING:

All employees covered by service contracts which require random testing, all Safety Sensitive employees, and all employees who must have a CDL to perform their duties for the Borough will be subject to random, unannounced alcohol and drug testing. Selection criteria, number of tests, and test frequency will be determined by the language of FHWA regulations and will be communicated to employees by the Borough management or Agent.

Upon notification of selection, the employee will report to the designated collection center immediately; provided, however, that if the driver is performing a safety sensitive function at the time of notification, the employer shall instead insure that the driver ceases to perform the safety sensitive function and proceeds immediately to the testing sight as soon as possible. Failure to report will be viewed as an attempt to elude the test or alter its results and will be viewed as a positive test.

All safety sensitive employees who have been out of the random drug testing pool for thirty (30) days or more will be required to submit to a drug and alcohol test prior to performing any safety sensitive function.

If an employee is selected through the Random Testing process and is not available for testing, the supervisor will document the reason and will select another safety sensitive employee to make-up the shortfall. The original selected employee will be required to submit for testing upon his/her return and prior to performing any safety sensitive function. Reasons for an employee to not be available are included in the following, but not limited to:

- Scheduled vacation
- Unscheduled or Scheduled Sick Leave (did not report to work, doctor's note may be required)
- Long-term Illness
- On-site or Off-site Training

REASONABLE SUSPICION TESTING:

All covered employees are subject to a fitness for duty evaluation, to include urine and breath testing, when there is reason to believe that alcohol or drug use is or will adversely affect job performance. A reasonable cause referral for testing will be made on the basis of documented, objective facts and circumstances which are consistent with the long and short term effects of substance abuse. All employees who are required to submit for a reasonable suspicion test at a testing facility will be driven to the center by a supervisor. If the testing agency performs testing on-site the suspected employee will not be able to leave the location and he/she must be watched over by the employer until the authorized testing agent performs tests.

The Borough of Rumson shall require a driver to submit to an alcohol test when the employee's supervisor has reasonable suspicion to believe that the driver is under the influence of alcohol. The supervisor's determination that reasonable suspicion exists must be based on specific, contemporaneous, particular observations concerning the appearance, behavior, speech or body odors of the driver.

The Borough of Rumson shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver is under the influence of a controlled dangerous substance. The supervisor's determination that reasonable suspicion exists must be based on specific, contemporaneous, particular observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

Alcohol testing is authorized by this section only if the observations required by this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may only be directed by the employer to undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

Reasonable cause testing determination will be made by a supervisor, Borough official or police officer who is trained to detect the signs and symptoms of drug and alcohol use and who can reasonably conclude that an employee may be adversely affected or impaired in his/her work performance due to substance abuse. If another supervisor or Borough official is immediately available, he/she will verify that there is reasonable cause before the employee is transported to the Agent's facility. At no time will this determination be made on the basis of third party reports without verification.

Employees who are deemed to require a fitness for duty evaluation based on reasonable cause will be sent to a health facility of the Borough's choice. The attending physician will make every attempt to determine the cause of the observed behavior, including authorizing, when his/her medical opinion dictates, an additional alcohol or drug test which is more comprehensive than that required by FHWA, state or contractual requirements. Employees will be placed on an unpaid medical leave of absence until the results of the examination are received by the Borough. Receipt of a negative drug test result and/or a doctor's statement that the employee was and is fit for duty is required prior to continued employment. Employees who are returned to duty by this means will be reinstated without prejudice and be made whole.

Employees who are medically determined to be temporarily unfit to perform their duties, but who test negatively for alcohol or drugs, will be returned to duty when they obtain a doctor's written statement that they are fit for duty.

DISCIPLINARY ACTION:

(This section applies only to those who test positive or refuse to submit for testing based on Random or Reasonable Cause.)

REFUSAL TO SUBMIT:

An employee's failure to submit to testing may result in disciplinary action up to and including dismissal. Failure to submit to a test by an applicant will result in denial of employment. Specifically, the following circumstances may be considered a refusal to test:

- Failure to report to the designated testing area immediately after being notified to submit to an alcohol or drug test
- Failure to remain at the designated testing facility until testing is completed and directed to leave by authorized staff
- Failure to accurately provide a sufficient sample to be tested, either breath or urine as the case may be, unless medically determined to be unable to do so
- Engage in conduct that clearly obstructs or delays the testing process

ALCOHOL TESTING POSITIVE:

0.02 - 0.039 Range

Employees who test positive during alcohol breath testing (**1st offense**) in the range of 0.02 - 0.039 will be suspended from work for a minimum of twenty-four (24) hours and may be required to pass a return-to-duty breath alcohol test before returning to work. In addition, the employee will be subject to disciplinary action. (The first return-to-duty testing is done at the employer's expense.)

0.04 and Higher Range

Employees who test positive during alcohol breath testing (**1st offense**) in the range of 0.04 or higher will be suspended from work and subject to disciplinary action up to and including immediate termination. At a minimum the employee must remain suspended for five (5) days without pay and shall comply with the following:

- (1) The employee shall be evaluated by a Substance Abuse Professional. This professional must meet the criteria outlined in the Department of Transportation's Alcohol and Drug Rules for Substance Abuse Professionals.
- (2) The employee complies and completes all recommendations made by the Substance Abuse Professional and be able to document same.
- (3) The employee submits to a return-to-duty drug test and proof of a negative test result must be received by the Borough. (The first return-to-duty testing is done at the employer's expense.)

The employee will then be subject to follow-up testing. A minimum of six (6) follow-up tests must be performed within the first twelve (12) months. (All follow-up testing is done at the employee's expense.)

Employees who test positive during alcohol breathe testing (**2nd offense**) in the range of 0.04 or higher will be immediately terminated.

DRUG TESTING POSITIVE:

Employees who test positive during drug testing (**1st offense**) will be suspended from work and subject to disciplinary action up to and including termination. At a minimum the employee must remain suspended without pay for five (5) days and:

- (1) The employee is evaluated by a Substance Abuse Professional. This professional must meet the criteria outlined in the Department of Transportation's Alcohol and Drug Rules for Substance Abuse Professionals.
- (2) The employee complies and completes all recommendations made by the Substance Abuse Professional and be able to document same.
- (3) The employee submits to a return-to-duty drug test and proof of a negative test result must be received by the Borough. (All return-to-duty testing is done at the employee's expense.)

The employee will then be subject to follow-up testing. A minimum of six (6) follow-up tests must be performed within the first twelve (12) months. (All follow-up testing is done at the employee's expense.)

Employees who test positive during drug testing (**2nd offense**) will be immediately terminated.

In any cases where an employee who tests positive during a random or reasonable suspicion test will be suspended and/or immediately terminated, the Borough reserves the right to fill that position on a temporary basis.

POST-ACCIDENT TESTING:

Any employee involved in an accident will be required to submit to a post-accident alcohol and drug test if instructed to do so by a police officer, a supervisor of the Borough of Rumson, or if:

- (1) The driver's performance either contributed to an accident or cannot be discounted as a contributing factor to the accident.
- (2) The driver involved in an accident receives a citation for a moving violation.
- (3) There is a fatality as a result of an accident.
- (4) The accident meets the Department of Transportation criteria for an accident that requires such testing.

When a post accident test is indicated the Borough will make every effort to have said test performed within two hours of notification of the accident. At no time will a period of more than eight (8) hours transpire between notification and testing. Documentation of the entire post-accident procedure should be made by all personnel involved in the notification and testing process.

Receipt by the Borough of a negative alcohol and/or drug test result is required prior to return-to-duty. Refusal to comply with the testing process will be considered insubordination and will carry the same disciplinary action as a positive test result. A positive test shall result in the same penalties as outlined in Disciplinary Action.

RETURN-TO-DUTY TESTING:

(All return-to-duty testing is done at the employee's expense.)

When the employee is cleared to return to work after a positive random or reasonable suspicion test, he/she will be required to pass an alcohol and drug test. Upon receipt of a negative finding, the Borough will review the employee's employment and will then determine if there are any other circumstances to warrant further discipline. If an employee is allowed to return to work, he/she will be subject to follow-up testing, as determined by the Borough. Testing will follow the Federal/OSHA standards for return to duty testing procedures.

FOLLOW-UP TESTING:

(All follow-up testing is done at the employee's expense.)

Any employee returning to work with the Borough after being suspended for a positive alcohol or drug test or returning to work after a leave of absence for voluntary substance abuse treatment will be subject to random follow-up testing. Testing will follow the Federal DOT/OSHA standards for follow-up testing procedures. The employee will be tested at least six (6) times in the first twelve (12) months after returning to duty and may be subject to follow-up testing for up to sixty (60) months.

Any employee who tests positive for drugs or alcohol during the follow-up testing process will be immediately terminated.

CONFIDENTIALITY OF TEST RESULTS:

The results of any drug test will be reported and recorded in a **CONFIDENTIAL** manner. Allowable communication of medical or test results will follow guidelines established in 49 CFR, Part 40. The results will not be reported to any additional parties without the employee's written authorization, except as outlined in 49 CFR, Part 40. A copy of the individual's test results will be available upon request.

QUALITY ASSURANCE OF TESTING PROGRAM:

The Borough, through its Agent, will take steps to make arrangements for testing to ensure that the laboratory is certified by Substance Abuse and Mental Health Services Administration (SAMHSA) and meets the requirements of the Department of Transportation.

The chain of custody for any urine sample shall be maintained at all times. If the chain of custody is broken, after the tamperproof seal is applied, the employee shall be re-tested at the Municipality's expense.

Any employee who receives a positive test will have the right to ask the Borough's Medical Review Officer (MRO) to re-test the sample at a National Institute of Drug Abuse (NIDA) certified laboratory of the employee's choice and at the employee's expense.

The Borough, through its Agent, will make every effort to ensure that the equipment being used for alcohol breath testing meets all the requirements of the Department of Transportation and that all testing will be performed by a qualified Breath Alcohol Technician.

SUBSTANCE ABUSE RELATED BEHAVIOR:

Any employee engaging in the manufacture, distribution, dispensing, possession or use of prohibited substances on Borough premises, in a Borough vehicle, or while on Borough business will be immediately discharged. Any manufacture, distribution, dispensing, possession, or use of prohibited substances by any employee in any manner which affects the employee's job performance, or which may cause the public or government or corporate body to lose confidence in the Borough's ability to perform its responsibilities, will result in disciplinary action up to and including immediate termination. Law enforcement officials could be notified, as appropriate, where criminal activity is suspected.

Any employee who refuses to comply with a request for drug testing shall be considered as having produced a positive test result and will be discharged. Any employee who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution, shall be terminated for insubordination. In the event that the laboratory detects any substance which has been added to the sample that interferes with the normal testing process will be considered a "refusal to test" and the same sanctions will apply.

The Borough of Rumson reserves the right to inspect, investigate, and search for controlled substances at any time, with or without prior notice, on or in any and all Borough, premises and vehicles. Refusal to cooperate with any inspection, investigation, or search that is authorized by a Borough representative shall result in termination for insubordination.

EMPLOYEES VOLUNTARILY SEEKING HELP:

The Borough strongly encourages an employee with a drug/alcohol abuse problem to voluntarily step forward and tell the Borough.

The Borough will assist in referring the employee to community assistance programs. An unpaid leave of absence will be granted for a reasonable period for treatment. The Borough will make every effort to hold the employees position during the rehabilitation process, for a period of one (1) year.

It is crucial to note that the accommodations in this section apply only when an employee voluntarily comes forward. If a substance abuse problem is disclosed to the Borough only after there has been: 1) a positive drug test; 2) a violation of a Borough rule or standard; 3) a violation of law; or 4) a violation of this policy, the same conditions outlined in sub-section A of the **RETURN-TO-DUTY** section of this policy apply. If an employee fails to remain drug/alcohol free after the first voluntary rehabilitation, he/she could be terminated.

TRAINING:

In an effort to educate employees in the dangers of drug use and the Borough's commitment to keeping drugs out of the workplace, each employee will receive information covering the dangers of substance abuse, the Borough's commitment to an alcohol and drug free workplace, and the penalties for violation of this policy.

All affected employees under this policy will receive initial training upon assignment, anytime changes are made to this policy, and every three (3) years.

All supervisors who manage Safety Sensitive Employee positions will receive the mandatory Federal Reasonable Suspicion training. The initial training will be conducted upon assignment and a refresher will be required anytime changes are made to this policy and every three (3) years.

EMPLOYEE ACKNOWLEDGMENT:

Each employee or prospective employee shall be given a copy of this policy. He/she must acknowledge receipt and understanding of the policy as a condition of employment.

NOTE REGARDING INDEPENDENT CONTRACTORS:

Independent contractors and their employees who must hold a CDL for the contracted activity are subject to the requirements of 49 CFR Part 382 portions of this policy and are responsible for compliance with all related State and federal laws.

The Borough will not provide or pay for tests, evaluation or rehabilitation for independent contractors or their employees. The Borough shall make compliance with the law a condition of any contract which requires a CDL driver.

CERTIFICATION OF RECEIPT

I certify that I have received a copy of, and have read the Borough of Rumson COMMERCIAL DRIVERS LICENSES/SAFETY SENSITIVE DRUG AND ALCOHOL TESTING POLICY.

I understand that as a condition of employment as a safety sensitive employee, I must comply with these guidelines and do agree that I will remain medically qualified by following these procedures. If I develop a problem with alcohol or drug abuse during my employment with the Borough of Rumson, I will seek assistance through my supervisor.

Name (Print): _____

Employee ID#: _____

Date: _____

Signature (of Driver): _____

Department: _____

Supervisor's Name: _____