ALLEGANY COUNTY SHERIFF'S OFFICE

DRUG & ALCOHOL TESTING POLICY

INTRODUCTION

This document contains the procedures for drug and alcohol testing of employees by the Allegany County Sheriff's Office.

DEFINITION OF TERMS

Alcohol- The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Use- The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

Breath Alcohol Technician (BAT)- An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath-testing device (EBT).

Chain-of-Custody- A document used to properly label, identify, and secure the specimen throughout the collection, transport, and testing process. (Also through storage if tested positive)

Collection Site- Location where urine specimen collections are performed in compliance with the applicable federal regulations where a "waterless", private area is kept solely for this purpose.

Confirmation Test- For alcohol testing this means a second test, following a screening test with a result of 0.02 or greater that provides quantitative data or alcohol concentration. For controlled substances testing this means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial or screen test and which uses a different technique and chemical principle from that of the initial or screen test in order to ensure reliability and accuracy.

Consortium- A unified group of member organizations that combine their efforts to meet a common goal (i.e. compliance)

D.H.H.S.- The Department of Health and Human Services, an arm of the federal government that oversees all health related matters and formulates policy regarding regulating health related programs.

Drug Test – A laboratory procedure that is used to detect the presence of a drug or its metabolite (breakdown product), which is confirmed by a second

different method, before reporting a positive result. A chain-of-custody secures the specimen throughout the process. A Medical Review Officer (M.R.O.) interprets the results.

E.A.P.- A term referring to an Employee Assistance Program, which is a program administered in confidence to assist an employee with a problem to a professional source of help and guidance.

Employer- Means any person (including the United States, a state, the District of Columbia or a political subdivision of a State) who owns or leases a commercial vehicle or assigns persons to operate such a vehicle, including agents, officers, and representatives to the employer.

Evidential Breath Testing Device (EBT)- A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Product's List of Evidential breath Measurement Devices" (CPL)

GC/MS- Gas Chromatography/Mass spectrometry. Highly advanced analytical methods a lab will utilize to detect the presence of a drug or its metabolite as a back up confirmation test before reporting a positive.

Insubordination- An act where an individual refuses to submit to the authority and mandates of the regulations. (See 49 CFR 391.95d)

Laboratory- A testing facility certified by the National Institute of Drug Abuse (N.I.D.A.) where the compliance drug testing process is performed under rigid standards.

M.R.O.- Medical Review Officer- A licensed physician knowledgeable in substance abuse disorders that interprets drug test results.

Member- A part of the larger group or organization.

N.I.D.A.- The National Institute of Drug Abuse, which monitors various aspects of the federal drug-free work place programs. (Old terminology- now refer to SAMHSA)

Negative- The result given to a drug test when the specimen does NOT contain a detectable amount of the drug or metabolite for which is being tested.

NHTSA- The National Highway Traffic Safety Administration- The agency that approves the various methods and instruments used for alcohol testing.

Participant- The term used to refer to each individual (driver) entered into the Consortium pool for random selection.

Performing (a safety-sensitive function)- Any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.

Pool- The entire group of participants from which the random selection will take place.

Positive- A lab positive is a drug test result that is screened and confirmed positive. A verified positive is a lab positive, which has been reviewed and interpreted by the M.R.O. as an illegitimate drug use.

Post Accident- (redefined by F.H.W.A. 11/91) Non-suspicion based post accident testing when a reportable accident involves a fatality **or** the driver is issued a citation for a moving violation.

Pre-employment- Circumstance referring to the pre-hire or pre-use status of a prospective employee.

Random- An unbiased method having no specific predictable pattern.

Random Selection Process- Covered employees are selected for drug and alcohol testing by the Consortium Administrator based on a scientific process using only the employee's ID number.

Reasonable Cause- Testing based on a specific, unordinary behavior of the employee as directly observed by a trained supervisor. The determination of testing will be based on the specific, articulatable observations concerning appearance, behavior, speech or body odors of the employee.

Refusal to Submit (to an alcohol or controlled substance test)- An employee (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirements for breath testing.
(2) Fails to provide adequate urine for controlled substance testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

Rehabilitation- To restore to good standing or reputation by means of education, counseling or therapy.

SAMHSA- The Substance Abuse and Mental Health Services Administration. A division of the federal government dealing with chemical dependency problems.

Screen- The first phase of drug testing that yields a negative result or a presumptive positive result that leads to confirmation testing by GC/MS methods.

Screening Test (aka initial test)- In alcohol testing it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

Substance Abuse Professional- A licensed physician (Medical Doctor or Doctor of Osteopathy) 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 controlled substance-related disorders.

Verification- The process by which an M.R.O. reviews and interprets drug results.

Waterless- Referring to a urine collections area where there is no accessible water, which is not colored with a bluing agent.

I. INTRODUCTION

ALLEGANY COUNTY SHERIFF'S OFFICE, whose principle place of business is 4884 State Route 19, Belmont, New York 14813, has formulated this drug and alcohol testing policy for the protection of the general public. The County recognizes that the use and abuse of controlled substances and alcohol poses a most serious problem in today's society and work place. Not only can this use and/or abuse of drugs and alcohol jeopardize the health, safety and well being of the individual user, but that of the general public as well.

Provisions have been made to assist the employee with a chemical related problem (s) to find professional help through the Employee Assistance Program (E.A.P.). The primary contact for the program is the County Sheriff. The employees who seek assistance through E.A.P. will be treated confidentially in a sincere effort to preserve their dignity and privacy.

II. SCOPE

This policy applies to all employees of the Sheriff's Office.

III. OCCASIONS FOR DRUG AND ALCOHOL TESTING

a) **Pre-employment**- Upon application to the County to work in a covered job capacity. This will also be the type of testing used for the current employee who transfers to a covered job capacity.

b) **Random**- Random selection with surprise employee notification just before, during or just after performance of safety-sensitive functions. The annual rate of testing for each substance is controlled by federal mandate.

c) **Reasonable Suspicion**- When circumstances such as behavior conduct, body odor, or other actions lead a supervisor to believe that the employee may be under the influence of drugs or alcohol while on duty.

d) **Post Accident Testing**- The County must conduct both controlled substances and alcohol testing on any employee involved in an accident which meets the following criteria:

- Whenever there is a fatality
- When the accident results in a fatality (regardless of whether a citation for a moving traffic violation is issued)
- When the accident results in bodily injury requiring immediate medical treatment away from the scene and a citation is issued to the driver of the commercial vehicle for a moving traffic violation.
- When the accident results in disabling damage to any motor vehicle requiring tow away and a citation is issued to the driver for a moving traffic violation.

1. Testing must be performed as soon as practicable after the accident. Alcohol tests should be taken within two hours of the accident but no later than eight hours. Controlled substance test must be taken within 32 hours.

2. Post accident testing regulations are not intended to delay the provision of necessary medical attention to an injured person and they don't prohibit a driver from leaving the scene of an accident for a period of time needed to obtain medical assistance. The employee will not delay testing after treatment is rendered.

3. In the case of a conscious, but hospitalized employee, the County will request that the hospital or medical facility obtain samples of urine or breath from the employee.

4. If an employee is injured, unconscious (employee is unable to communicate) or otherwise unable to evidence consent

(employee is unable to sign custody and control form) to the drug and alcohol tests, All reasonable steps will be taken to obtain urine, breath or blood samples (s) from the employee.

5. If an employee is conscious (employee can communicate) and he/she is able to evidence consent (employees able to sign custody and control form) to the drug and alcohol tests and is able to void normally (without the aid of catheters) the urine specimen shall be collected and the breath sample shall be attempted for the alcohol test.

6. If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional) and refuses to be tested, that person shall be removed from duty in accordance.

7. Attempts to obtain an alcohol sample will cease after 8 hours.

8. In any condition above, where the employee is not able to consent to drug and alcohol testing, the signed acknowledgment to this policy will be the employee's advance consent to obtain the required samples.

e) **Return to Duty** - Testing prior to the employee returning to any duty of employment for the County after having tested positive for drugs, having an alcohol concentration at or above 0.04%, or engaging in certain prohibited conduct, and after appropriate rehabilitation has been successfully completed. An employee may be subject to a return to duty test before returning to duty if a previous alcohol test resulted in a removal from any safety sensitive job capacity due to an alcohol concentration of 0.02 to 0.039%.

f) **Follow Up Testing**- Refers to drug and alcohol testing once an employee is allowed to return to duty. The employee for whom treatment was recommended must be subject to unannounced follow-up testing for at least 12, but not more than 60 months. The frequency and duration of the follow-up testing will be recommended by the SAP as long as a minimum of 6 tests are performed during the first 12 months after return to duty. Follow up testing is separate and in addition to the regular random testing program.

IV. POLICY STATEMENT- GENERAL PROHIBITIONS DRUGS

Prohibited Conduct

The use, sale or transfer, possession or distribution of illegal drugs or other controlled substances on County premises, job site, prospective job site, or in the course of any duty of employment is strictly prohibited. Employees suspected of being under the influence of drugs while in the course of their duties of employment may be subject to reasonable suspicion testing.

Drugs, or paraphernalia found on County premises or in a County vehicle will be turned over to the local law enforcement officials and the County will cooperate with law enforcement officials concerning the investigation of such incidences.

Alcohol Misuse

The use, sale, transfer or possession of any alcohol containing substance on County premises, job site, prospective job site, in a County vehicle, or in the course of any duty of employment is strictly prohibited. ***Proven violation of this mandate will constitute cause for disciplinary actions.*** Employees suspected of being under the influence of alcohol in the course of their duties of employment may be subject to reasonable cause testing. Alcohol-containing over-the-counter prescription drugs are not allowed to be possessed unless the original package seal is intact. No alcohol is to be consumed on lunch hour or breaks under any circumstances by those employees operating in the covered job capacities.

Prescription Drugs

It is considered illegal drug use when prescription or over-the-counter medications are being used in an amount, for a purpose or by an individual for which they are not originally prescribed or designated or which were illegally obtained. Any employee taking a prescription medication that may reasonably affect his/her performance of any job duty is mandated to have the signed approval of their prescribing physician/practitioner. A special form is available for your physician to sign from the drug program coordinator.

V. DRUG TESTING

a) LABORATORY ANALYSIS FOR DRUGS

Only a laboratory with specialized certification from Substance Abuse and Mental Health Services Administration (SAMHSA) will be utilized for drug testing to assure the highest quality standards in analysis. A strict chain-of-custody procedure will secure the lab samples.

A urine specimen will be initially tested by the laboratory using the immunoassay technique. If the test is positive, a second analytical procedure called Gas Chromatography/Mass Spectrometry (GC/MS) will be used. If a specimen tested using GC/MS is negative, the laboratory shall report the result as negative to the M.R.O.

Since some analytes may deteriorate during freezing and/or storage, the results of a retest will be reported as negative confirmation or the original test results if the detected level of the drug is below the established limits and equal to or greater than the sensitivity of the test.

The five drugs for which the SAMHSA Lab will be testing will be: Marijuana, cocaine, PCP, opiates, and amphetamines as well as any additional drugs that may be mandated by future Federal regulations. Blind specimens will be sent to the lab for quality assurance checks. As least 80% of these samples will be negative for drugs. Three samples of blinds will be submitted for every 100 test performed.

b) THE COLLECTION PROCEDURE

When an employee is selected for random testing, the site used for the collection may include physician's offices, or other locations where secure arrangements for collection in accordance with Part 382,391 and Part 40 have been made.

A collection site person will instruct and assist individuals one at a time at the collection site. The collection site person will receive and make an initial examination of the urine specimen provided. The specimen shall remain under the direct supervision of the collection site person and in the presence of the employee until secured for shipment. One of the following situations would permit a collection site person to observe collection of the specimen:

1. The urine falls outside the normal temperature range (32.5° C – 37.7° C/90.5 degrees F- 99.8° F)

2. The collection site person observes an attempt to substitute or adulterate the sample.

3. The employee is scheduled for a follow-up test.

In any case where a collection must be observed or collection is monitored, the collection site person will be a person of the same gender as the donor.

In each case a chain-of-custody procedure will be followed. These procedures are used to account for the integrity of each urine specimen

collection to final disposition of the specimen. Every effort shall be made to limit the number of persons handling specimens. Each time a specimen is handled or transferred, each individual in the chain-of-custody shall be identified. The donors name will not appear on the laboratory copy of the chain-of-custody.

A standard urine custody and control form will accompany the specimen to the laboratory. Copies of the form will be provided to the Medical Review Officer, the employee, the collection site and the County. The form will be a permanent record on which identifying data on the employee, on the specimen collection and transfer process are retained. Urine samples will only be tested for the five drugs: Marijuana, cocaine, PCP, opiates and amphetamines except to check for specific gravity, PH, creatinine level or presence of adulterants.

A tamper-proof sealing system will be placed over the bottle and sides to protect against undetected opening. The bottle will be identified to the number appearing on the chain-of-custody form. Space will be provided to initial the bottle affirming its identity.

The Collection Protocol will be as follows:

a. A "Waterless Environment" will be set up to secure the collection site. Any source of water shall be turned off or secured with tamper tape. The employee will be instructed not to flush the toilet until the specimen is delivered to the collection site person.

b. The collection site person shall positively identify the employee selected for testing through photo identification or identification by the employee's supervisor. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.

c. If an employee fails to arrive at the assigned time, the collection person shall contact the employer representative for further direction.

d. The collection site person may ask the employee to remove outer garments. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.

e. The employee shall be instructed to wash and dry his or her hands.

f. After washing hands, the employee shall remain in the presence of the collection site person and shall not have access to any water fountain, soap dispenser, cleaning agent, or any other materials, which could be used to adulterate the specimen.

g. The employee may provide their specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person shall provide the individual with a sealed specimen bottle or collection container, whichever the employee desires.

h. The collection site person shall note any unusual behavior or appearance on the urine custody and control form.

i. If the employee is unable to provide at least 45 ml of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluid. The original insufficient specimen shall be discarded, and a fresh collection container used. If the employee is still unable to provide an adequate specimen within two hours from the time of arrival at the collection site, the insufficient specimen shall be discarded, testing discontinued, and the employer representative notified. The MRO shall refer the employee for a medical evaluation to develop pertinent information concerning whether the individual's ability to provide a specimen is genuine or constitutes a refusal to test. Upon completion of the examination, the MRO shall report his or her conclusions to the employer representative in writing.

j. Within four minutes after the specimen is collected, the collection site person shall measure the temperature of the specimen on the outside of the bottle.

k. The collection site person notes the temperature on the chain-of-custody form. The acceptable range is 32.5° C – 37.7° C/ 90.5° - 99.8° F.

l. The collection site person shall determine if the primary bottle contains at least 30 ml of urine and the split contains at least 15 ml of urine.

m. The collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control firm.

n. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

o. Whenever there is reason to believe that a particular individual has altered or substituted the specimen, a second specimen shall be obtained as soon as possible under the direct observation of the same gender collection site person

p. The collection site person shall enter on the drug testing chain-of-custody form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.

q. The employee shall be asked to read and sign a statement on the drug testing custody and control form that the specimen collected from him/her in fact that specimen he/she provided.

r. If the specimen is not immediately picked up for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.

s. The collector shall ship the samples to the laboratory via the lab courier.

t. If the employee refuses to cooperate with the collection process, the collection site person shall inform the designated County representative and shall document the non-cooperation on the drug testing custody and control form. This may constitute a refusal to take a test.

VI. LABORATORY RESULT REPORTING AND SPECIMEN RETENTION

Reporting of all lab drug results will be directed to a licensed physician serving as a Medical Review Officer or MRO. When the lab reports a positive test to the MRO, an opportunity to discuss the results will be afforded to the employee/applicant.

If the drug detected can be justified by a legitimate prescription with proper use, the MRO will designate the test as "negative". The MRO retains the right to make the final determinations in all cases involving the legitimacy of drug use. This process is to guard against discipline with appropriate drug usage. This is known as the MRO verification process. A verified positive drug test results in the employee being removed from any safety-sensitive job duty. Re-analysis of the original sample after a verified positive lab result must be paid for, by the employee making the request, in advance.

Confirmed positive samples will be retained by the approved laboratory in secured, frozen storage at a temperature of –20° for at least one (1) year. If a written request for an extension to retain the sample is not received from an employee representative, or a state agency, or the County within the one-year period, the laboratory may discard the sample. The laboratory shall report all test results to the MRO as soon as possible. Specimens that are confirmed positive shall be reported specifically by drug.

The MRO may request quantification of test results but may not report those results to the County.

The laboratory or collection facility will provide the County with a monthly statistical summary of drug test results, not including any personal information. A state agency may also request analytical information. The drug program coordinators Superintendent and Deputy Superintendent will maintain the statistical summaries.

The laboratory shall maintain written documentation of drug test records for at least two years.

The Consortium employs a Medical Review Officer who is a licensed private physician with knowledge of drug abuse disorders to review drug test results. The Medical Review Officer will review drug testing results conducted in accordance with 49 CFR Parts 382,391 before results are reported to the County. The Medical Review Officer will review and interpret each confirmed positive test result as follows to determine if there is an alternate medical explanation for the confirmed positive test result.

The specific functions of the MRO are:

a) Ensure that an employee has been drug tested in full compliance with the proper chain-of-custody procedures.

b) Conduct a medical interview with the individual tested.

c) Review the individual's medical history and any relevant biomedical factors.

d) Review and interpret all medical records made available by the employee tested to determine if a confirmed positive test resulted from a legally prescribed medication. If it is determined to be the result of a legally prescribed medication, being taken as prescribed, the MRO shall report the result as negative.

e) If any question arises regarding the validity of a positive test result, the MRO may require that the original specimen be reanalyzed at a DHHS certified laboratory to determine the accuracy of the reported test results.

f) Verify that the laboratory report and assessment are complete.

g) Provide the employee an opportunity to discuss the test with him/her before reporting any information to the County.

a. The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result.

b. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact the employer representative who shall direct the individual directly; the MRO shall contact the employer representative who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated employer representative, to the maximum extent practicable, the requirement of the employee to contact the MRO will be held in strictest confidence.

c. The MRO may verify a test positive without having communicated directly with the employee about the tests in the following circumstances:

a) The employee expressly declines the opportunity to discuss the test: OR
b) More than five days have passed since the date employee was successfully directed by the employer representative to contact the MRO. (Except if an employee presents to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the MRO.)

h) The MRO, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that a result is scientifically insufficient for further action and declare the test specimen negative.

i) If the MRO determines after appropriate review that there is no legitimate medical explanation for the confirmed positive test results

other then the unauthorized use of a prohibited drug or the inappropriate use of a legal drug, the MRO shall report the confirmed positive result to the County.

The Medical Review Officer shall authorize a reconfirmation of the original sample if the employee makes a written request for retesting within 72 hours after being notified of a positive test by the MRO. The employee may specify retesting by the original laboratory or another DHHS certified laboratory. Employees will be required to pay in advance the cost of shipment and reanalysis of the sample. The original laboratory must follow approved chain-of-custody procedure in transferring a portion of the sample to a second laboratory, if applicable.

VII. ALCOHOL TESTING

a) An alcohol test will be started by the initiation of a breath alcohol testing form. The form is not needed if the device prints all the information onto a test form. Step one of the form will contain the employee or applicant name and ID, employer name and address with phone number. You will be asked for positive identification.

b) The employee will be informed of testing protocol.

c) The employee will sign Section 2 and date form. **Refusal to sign and date the form in this step is a refusal to take the test.**

d) The employee will be instructed in the procedure for providing a breath sample; a six second exhalation or until the device indicates an adequate sample is obtained.

e) If the result of an alcohol screening test is a concentration of less than 0.02% the steps are:

   a. The B.A.T. (Breath Alcohol Technician) will sign and date the form.
   b. The employee will sign and date the form in Section 4.
   c. Copy 2 of the form goes to the employee.
   d. Employer gets Copy 1
   e. B.A.T. keeps Copy 3
   f. Testing is complete
   g. If the employee refuses to sign and date Section 3 and initial the B.A.T.'s logbook, it is NOT considered refusal but notation of the action is made in the remarks section.

f) If the results of the alcohol screening test is an alcohol concentration of 0.02% or greater a confirmation test must be initiated and the employee will be informed of such.

g) If another B.A.T. is to conduct the confirmation test, the first alcohol testing form and logbook will be signed, dated, and initialed with copies distributed to each party as explained in Step E. above. The next B.A.T. will initiate a new form for the confirmation test.

h) If the original B.A.T. is to conduct the confirmation test, the same alcohol form may be used.

i) Confirmation test procedure is:

a. Advise the employee not to eat, drink, put anything (i.e. cigarette, chewing gum) into his or her mouth or belch.
b. The B.A.T. will inform the employee that the test will be administered at the end of the waiting period but before 20 minutes has elapsed. The test will be done even if the employee has not complied with the instructions.
c. An air blank will be tested by the E.B.T. Unit and a reading of 0.000 will be obtained or another unit will be employed.
d. The employee will provide a breath sample after a new mouthpiece has been put in place.
e. The results will be attached to the breath alcohol form or directly initialed if all information is contained on the printout.
f. If any discrepancies in test number or sequence take place it will be noted on the form.
g. The results of the confirmation test are deemed to be the final result upon which any actions will be based.
h. Improper performance by the E.B.T. will invalidate the test and will be explained to the employee.

NOTE: A Properly trained B.A.T. will be performing all alcohol tests in accordance with 49 CFR 40.

j) A refusal to take an alcohol test is when an employee refuses to:
a. Sign and date Section 2 on the Breath Alcohol or E.B.T. test form.
b. Provide Breath
c. Provide an adequate amount of breath
d. Cooperate with the testing process

k) If an employee is unable or alleges that he/she is unable to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, another attempt will be made with proper instructions. If the employee again fails to provide an adequate

amount of breath, it will be noted in "Remarks" and the employer will be immediately notified. If it is determined that no medical condition exists preventing an adequate breath to perform the alcohol test, it will be considered a refusal to test.

l) Quality Assurance procedures developed by the E.B.T. manufacturer will be performed and documented by the B.A.T. in accordance with 49 CFR part 40.

VIII. FAILURE TO SHOW UP

Once notified, any employee or applicant refusing to provide a urine, breath or blood sample, refuses to sign any relevant documentation, such as chain-of-custody form, the breath alcohol testing form, or release and consent forms, fails to present him or herself at the designated collection site at the appointed time, fails to properly cooperate with the MRO, collection site personnel, or engages in any conduct which creates a reason to believe any sample to be used for drug or alcohol testing has been altered or substituted. Failure to give a sample will be considered a positive test. The employee will be given a reasonable amount of time to report for the tests.

IX. POSITIVE TEST RESULTS

If an employee tests positive with an alcohol concentration of .02 or greater but less then .04 with no fatality, he will be removed from the vehicle for 24 hours for the first instance and removed from the vehicle for 24 hours and referred to the Employee Assistance Program for the second instance within 2 years. If the employee has a positive alcohol (.04 or greater) or drug test with no fatality, then he will be removed from the safety sensitive job immediately and cannot return to work until he has gone through the rehabilitation program and has been cleared by the Employee Assistance Program. If he refuses to comply with the program, test positive when a fatality is involved or test positive for a second time, he may be subject to discipline.

The following actions will be taken in the event of a positive result in each of the following circumstances:

Pre-Employment

Any applicant who tests positive as a result of a pre-employment drug test will not be considered for employment at that time.

Any current employee testing positive on a drug test on a pre-employment basis will be relieved of all safety sensitive duties pending investigation of all pertinent circumstances. She/he may be guided to a professional by the E.A.P. coordinators for help with the chemical involved. Section XII of this policy under the heading Reinstatement will dictate the employee's fitness for work re-entry.

Random

Any employee who tests positive as a result of a drug or alcohol test taken in a "Random" situation will follow the same protocol as set forth in the preceding section entitled "Positive Test Results"

Reasonable Suspicion

Any employee who tests positive as a result of a drug or alcohol test taken in a "Reasonable Suspicion" situation will follow the same protocol as set forth in the preceding section entitled "Positive Test Results". "Reasonable Suspicion" indicates reasonable suspicion of drug use on the job, documented by supervisor observation. Only those supervisors who have been trained can order a reasonable suspicion test. The policy states that two supervisors, where possible, shall have to order the reasonable suspicion test. The County will not harass its employees in regards to Drug & Alcohol Testing. Copies of any documentation shall be given to the Union upon written request of the employee.

Post Accident

Any employee who tests positive as a result of a drug or alcohol test taken after his/her direct or indirect involvement in an accident, as described in Section #3 "Post Accident" will be subject to discipline.

In the event that an employee is seriously injured and unable to provide a specimen at the time of the accident, he/she shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system at the time of the accident. Drug or alcohol tests given by Law Enforcement Agents will be considered valid and in compliance with the standards or Federal, State and policy mandates.

Return to Duty Testing

Any employee testing positive on a return-to-duty drug or alcohol test will not be allowed to perform any safety sensitive duties.

Follow-Up Testing

Any employee who tests positive to a drug or alcohol test taken under any circumstances after the same person has completed a drug or alcohol rehabilitation program will be subject to discipline up to and including discharge.

X. REHABILITATION AND REINSTATEMENT

All responsibility for participation in a rehabilitation program belongs with the employee. It is the responsibility of the employee to utilize his/her health benefits or personal resources to pay for these services.

The County's Employee Assistance Program is administered by:

EMPLOYEE SERVICES
111 West Pearl Street
Wellsville, NY 14895
(585) 593-6390

Reinstatement

It is required that an employee provides proof of rehabilitation as well as a negative drug and/or alcohol test before being considered for work re-entry. This will be done in accordance with New York State Civil Service Law, Section 73.

XI. RECORD KEEPING AND RETENTION

The County Drug and Alcohol testing program coordinators will keep the following records for the period specified and permit access to the records provided: Records that demonstrate the collection process conforms to Part 382, 391 and Part 40 will be kept at least three years, records of employee drug test results that show employees failed the drug or alcohol test and the type of test failed and records that demonstrate rehabilitation, if any, will be kept for five years and include the following information: The functions performed by employees who failed the drug or alcohol test, the prohibited drugs or alcohol which were used by employees that failed the test, the disposition of employees who failed the test, and employees who passed the drug and alcohol tests will be kept for at least one year. A record of the number of employees tested by type of test will be kept for at least five years. Records confirming that supervisory employees have been trained as required will be kept for at lease three years. Records shall be kept in a locked filing cabinet and maintained in strictest confidence separated from employee files.

Information regarding an individual's drug and alcohol testing results or rehabilitation will be released only upon written consent of the individual to ensure confidentiality. Statistical data related to drug and alcohol testing and rehabilitation that is not name-specific and training records will be made available to the County of the representative of the state agency upon request.

XII. PRIVACY

No results of drug or alcohol tests or participation in a rehabilitation program will be released to a third party without the employee's specific written consent. However, information may be released by the County in Accordance with Sub Part P of 49CFR40.

XIII. CONCLUSION

ALLEGANY COUNTY SHERIFF'S OFFICE will strive to provide a safe and chemical-free workplace. The County concern is to keep illegal drug use and alcohol misuse out of this workplace for the ultimate safety of all workers as well as that of the general public.

All time spent administering an alcohol or controlled substance test; including travel time will be paid at the employee's regular rate of pay, or at their overtime rate, if applicable. Any employee who is not allowed to return to work while awaiting test results will be compensated during the waiting period for all work time lost, including overtime, if applicable. The employer shall pay all costs associated with the administration of alcohol and controlled substances tests. This includes testing of the "split specimen" at a federally certified laboratory, if so requested by the employee, if test results are negative.

Should a positive test then prove negative, the County will reimburse the employee for their lost time, and the employee will not be required to use any accrued leave time.

Continuation of Pay

Employees undertaking rehabilitation will be entitled to all accumulated contractual benefits with respect to paid leave; and in addition, such employees shall be entitled to all sick leave benefits, including, if applicable, extended sick leave.

Nothing in this policy is to be construed as a denial of rights guaranteed by the Collective Bargaining Agreement and/or those portions of State of Federal Law, which supersede the C.B.A.

This document represents the Allegany County Sheriff's Office Policy with respect to compliance with the Omnibus Transportation Employee Testing Act of 1991. The County agrees that it shall not unilaterally act to change the terms of procedures presently contained in this policy. However, the County may unilaterally act to change the terms or procedures within this policy when required to do so by the Federal statute or regulation.

The County will not condone the possession or use of controlled substances or alcohol in this workplace by any of its employees. It is also imperative that workers and drivers remain free of the influence of controlled substances and alcohol on the job. The County will not tolerate the health and safety risks associated with drug and alcohol use on the job.

ACKNOWLEGEMENT OF THE DRUG AND ALCOHOL TESTING POLICY OF THE ALLEGANY COUNTY SHERIFF'S OFFICE

I hereby acknowledge, by signature below, that I have received and read a copy of the Sheriff's Office policy on drug and alcohol testing and agree to abide by the terms and conditions set forth within the policy.

I understand that certain conditions are mandated by Federal regulations for drivers and for public safety considerations. The policy is being administered to the employees in a uniform and unbiased manner. I further understand that my compliance with the policy and procedures are a condition of my new or continuing employment or contract with Allegany County.

My signature on this document is of my own free will without undue duress and with the understanding that the provisions of this policy do not in any capacity constitute a contract of employment or contract for services.

_____ _____

SIGNATURE DATE

_____

PRINT NAME

_____ _____

COUNTY WITNESS- SIGN/PRINT DATE