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## ARTICLE XIV

### **Implementation of Federal Motor Carrier Safety Administration Regulations on Drug Use and Alcohol Misuse**

#### **Sec. 3-14-10. Overview.**

A. This policy is designed to enhance productivity and safety and to foster excellence by maintaining a safe and productive environment for employees. The County maintains a strong commitment to a drug-free and an alcohol-free work environment and has adopted this policy to provide guidance to supervisors and employees in dealing with drug use and alcohol misuse. This policy is applicable only to County employees subject Federal Motor Carrier Safety Administration (FMCSA) regulations on the misuse of alcohol and the use of controlled substances. The County reserves the right to conduct drug and/or alcohol tests of applicants or current employees in accordance with any other state and/or federal law.

B. To further our commitment to providing a safe, drug-free and alcohol-free environment, the County has adopted the following policies:

- (1) An employee and supervisor education and training program regarding drug and alcohol misuse and abuse.
- (2) A drug and alcohol testing program for drivers and applicants seeking employment as drivers who perform safety-sensitive functions.
- (3) A program for evaluating drivers who violate the drug use and alcohol misuse policy.
- (4) Administrative procedures of record keeping, reporting, releasing information and certifying compliance with the FMCSA regulations.

C. The County is dedicated to ensuring fair and equitable application of this substance abuse policy. Therefore, supervisors and managers are required to use and apply all aspects of this policy in an unbiased and impartial manner to the employee categories listed in Section 3-14-20 of this Code. Any supervisor or manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including dismissal, pursuant to this Code.

D. The Department of Human Resources Services is responsible for the enforcement of this substance abuse policy and is the Designated Employer Representative. (Weld County Code Ordinance 2003-3; Weld County Code Ordinance 2007-4)

**Sec. 3-14-20. Employee categories subject to testing.**

A. The FMCSA regulations apply to all drivers of commercial motor vehicles in interstate or intrastate commerce who perform safety-sensitive functions and are subject to commercial driver's license ("CDL") requirements. Applicants and current employees seeking positions as drivers who will perform safety-sensitive functions also are covered by the FMCSA regulations.

B. 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 function. Therefore, an employee who is "on call" for duty is covered by this policy. The FMCSA defines the following functions as safety-sensitive:

1. All time at a carrier or shipper plant, terminal, facility or other property waiting to be dispatched, unless the driver has been relieved from duty by the employer.
2. All time inspecting equipment as required by the FMCSA regulations, or otherwise inspecting, servicing or conditioning any commercial motor vehicle at any time.
3. All time spent at the driving controls of a commercial motor vehicle.
4. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
5. All time loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle or giving or receiving receipts for shipments loaded or unloaded.
6. All time repairing, obtaining assistance or remaining in attendance upon a disabled vehicle.

C. The following categories of drivers for the County are subject to the policy and are considered to perform safety-sensitive functions:

1. Service Workers I, II and III.
2. Lead Worker.
3. Welder II and III.
4. Foreman.
5. Supervisor.

D. Although the following categories of drivers for the County do not perform safety-sensitive functions as defined above, pursuant to County policy they are subject to the regulations set forth in this substance abuse policy:

1. Public Works Graders II and III.
2. Weed Control Specialists I and II.
3. Weed Control Lead Worker.

4. Mowers I and II.
5. Vegetation Management Specialist.
6. Flagger/Laborer.

E. These lists are subject to amendment at any time. Participation in this drug and alcohol testing program is a condition of employment for each of the above-listed drivers. (Weld County Code Ordinance 2003-3; Weld County Code Ordinance 2003-6; Weld County Code Ordinance 2010-8)

**Sec. 3-14-30. Prohibited conduct.**

A. Alcohol.

1. Drivers subject to this policy must not consume alcohol:
  - a. While performing a safety-sensitive function.
  - b. Within four (4) hours prior to performing a safety-sensitive function.
  - c. For up to eight (8) hours following an accident or until the driver undergoes a post-accident test, whichever occurs first.

2. Drivers are prohibited from possessing alcohol while on duty or while operating a commercial motor vehicle unless the alcohol is manifested and transported as part of a shipment. As referred to in this policy, *alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular-weight alcohols, including methyl and isopropyl alcohol. *Alcohol use* means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication) containing alcohol. FMCSA regulations currently prohibit drivers from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. (Drivers subject to this policy are strictly prohibited from using or ingesting prohibited drugs at any time, except when the use is pursuant to the instruction of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely perform his or her job. Any driver taking such a substance at a physician's instruction must inform the County of such drug use. The County retains the right to verify the use with the employee's physician. Manufacturing, distributing, dispensing, possessing or using controlled substances in the work place is prohibited pursuant to the Drug-Free Workplace Act.)

B. Controlled substances.

1. Pursuant to County policy, any driver who manufactures, distributes, dispenses, processes, sells, attempts to sell or arranges to sell a controlled substance to any other person, whether on or off County property, whether on or off duty, shall be subject to discipline up to and including discharge.

2. As referred to in this policy, a controlled substance or prohibited drug means marijuana, cocaine, opiates, amphetamines or phencyclidine. FMCSA regulations prohibit the performance of safety-sensitive functions when a prohibited level of any of the five (5) specified drugs is detectable in the driver's urine.

3. An employee will not be allowed to perform or continue to perform safety-sensitive functions if the County has actual knowledge that the employee was using controlled substances at any

time or alcohol during the performance of a safety-sensitive duty or four (4) hours prior to reporting to duty for a covered position. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-40. Drug and alcohol testing program.**

A. Drivers who perform safety-sensitive functions, and those listed above who do not perform safety-sensitive functions, will be subject to testing pursuant to FMCSA regulations. Testing of other employees, applicants for employment and any drivers who perform safety-sensitive functions over and above the requirements of FMCSA regulations will be performed pursuant to separate authority of the County. Any testing procedures utilized by the County will conform with applicable federal and state requirements.

B. Under County policy and FMCSA, a refusal to take a test will constitute the equivalent of a positive drug test or an alcohol test of 0.04 or greater. Therefore, refusal by a driver to submit to required testing or failure to pass a drug or alcohol test will lead to disciplinary action, up to and including termination, pursuant to this Code. Any driver who refuses to submit to a required drug or alcohol test will not be permitted to continue to perform safety-sensitive functions. Refusal to take a test includes:

1. Outright refusal to submit to a test or any part of the testing process.
2. Failure to provide sufficient quantities of saliva, breath or urine to be tested without a valid medical explanation.
3. Failure to undergo a medical examination as directed by the Medical Review Officer or Designated Employer Representative
4. Engaging in conduct that clearly obstructs the testing process.
5. Refusal to sign the certification in Step 2 of the Breath Alcohol Testing Form.
6. Leaving the scene of an accident without a valid reason before tests are conducted without notifying the County of where the driver can be reached for testing.
7. Failure to appear for any test within a reasonable time as determined by the County (except a pre-employment test).
8. Failure to remain at the testing site until the testing process is complete.
9. In the case of a directly observed or monitored collection, failure to permit the observation or monitoring.
10. Failure to take a second test as directed by the employer or collector.
11. A verified adulterated or substituted test result as reported by the Medical Review Officer.

C. Pursuant to County policy, any driver who tampers with, falsifies, substitutes or alters a urine sample, saliva or breath test, or who attempts to do so, shall be subject to disciplinary action, up to and including termination, pursuant to this Code.

D. The County will adhere to all required standards of confidentiality as defined in 49 CFR Part 382, Subpart D. Testing records and results will be released only to the employee upon a written request and those authorized to receive such information. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-50. Testing for controlled substances.**

A. Drug testing of drivers who perform safety-sensitive functions is limited to the following substances:

1. Marijuana.
2. Cocaine.
3. Amphetamines.
4. Opiates (e.g., heroin, codeine).
5. Phencyclidine (PCP).

B. While drug testing by the County normally will be limited to the five (5) substances listed above, the County reserves the right, pursuant to its policy and under its own authority, to require drivers to provide separate specimens for testing for other controlled substances, as permitted by law. The County reserves the right, pursuant to its policy and under its own authority, as permitted by law, to perform drug tests of applicants or current employees not covered by this policy using the same procedures FMCSA requires for testing drivers who perform safety-sensitive functions. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-60. Testing for alcohol.**

Alcohol testing of drivers will be performed pursuant to FMCSA regulations. The County reserves the right, pursuant to its policy and under its own authority, as permitted by law, to perform alcohol tests of applicants or current employees not covered by this policy using the same procedures FMCSA requires for testing drivers who perform safety-sensitive functions. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-70. Testing procedures.**

A. The County will select an appropriate site for the administration of drug and alcohol tests which meets the requirements specified by the U.S. Department of Transportation 49 CFR Part 40. A copy of said Part 40 is available to any employee who would like to review the procedures. Pursuant to County policy, drug and alcohol testing will be conducted off County premises. Normally, administration of alcohol tests will be performed concurrently with urine collections. The County reserves the right, however, to administer alcohol tests separately from urine collections and to administer alcohol tests and/or urine collections on County premises.

B. The site selected for collecting urine specimens will provide: a privacy enclosure for urination; a toilet; a suitable, clean writing surface; and a water source for hand washing which, if practicable, will be located outside the privacy enclosure. The contractor who conducts the testing will ensure that access to the testing site is restricted during testing, that unauthorized persons are not present and that there are no unobserved entrance points to the testing site. Furthermore, the County shall ensure that the collection site personnel provided by the contractor have certified qualifications and during the collection process ensure the dignity and privacy of the donor, and that all collection site personnel are trained to prepare the collection site, collect specimens, examine specimens for tampering or sample adulteration, observe collections, split specimens and properly label and preserve the chain of custody of the specimens. These steps will be taken to protect the driver and the integrity of the drug testing process, safeguard the validity of the test results and ensure that the test results are attributed to the proper driver. (Alcohol tests will be

conducted with the use of a nonevidential screening device and/or evidential breath testing device approved for use by the National Highway Traffic Safety Administration. A Screening Test Technician will administer nonevidential screening tests, including saliva tests. Only a Breath Alcohol Technician will administer an evidential breath testing device test. Alcohol tests will be administered in a location that affords visual and aural privacy to the driver being tested which is sufficient to prevent unauthorized persons from seeing or hearing test results. If the screening test reveals a blood alcohol concentration of less than 0.02, the test is negative and will be reported as such. If the screening test reveals a blood alcohol concentration of 0.02 or greater, a confirmation test will be performed. Confirmation tests will be performed using an evidential breath testing device and conducted within thirty [30] minutes of the completion of the screening test. If the driver must be transported from the screening site to the confirmation site, the driver will remain under the direct observation of a Breath Alcohol Technician, Screening Test Technician, or other employer representative. These steps will be taken to protect the driver and the integrity of the testing process, safeguard the validity of the test results and ensure that the test results are attributed to the proper driver.) (Weld County Code Ordinance 2003-3)

### **Sec. 3-14-80. Role of Medical Review Officer.**

All drug test results will be reviewed first by a specially trained and certified physician serving as Medical Review Officer. The Medical Review Officer will follow all the appropriate procedures as defined in 49 CFR Part 40. The Medical Review Officer will notify the County directly if a driver's drug test result is negative. If the drug test result is positive, the Medical Review Officer will contact the driver to discuss the test, to determine if the positive result is valid and to notify the driver that he or she has seventy-two (72) hours to request a test of the split specimen. (See Section 3-14-190 entitled "Retesting at Driver's Request" for a detailed description of split test procedures.) The County only will be informed that an individual has tested positive or negative. The specific drug involved may be disclosed to the County by the Medical Review Officer. The levels detected will not be disclosed by the Medical Review Officer to the County. (Weld County Code Ordinance 2003-3)

### **Sec. 3-14-90. Role of Substance Abuse Professional.**

A. All drivers with a verified positive drug test result or a confirmed alcohol test result of 0.04 or greater, including those who have been terminated, will be referred for evaluation by a Substance Abuse Professional. If the driver's eventual return to work is permitted under this policy, the Substance Abuse Professional shall prescribe a treatment program which the driver must successfully complete or continue to follow in order to return to work. This treatment program may include referral of the driver by the Substance Abuse Professional to a treatment provider. The specific responsibilities and protocols that are followed by the Substance Abuse Professional are defined in 49 CFR Part 40.

B. Drivers permitted to return to work following a positive test shall be re-evaluated by the Substance Abuse Professional to determine whether the driver has complied with the Substance Abuse Professional's recommendations. After that evaluation and the successful completion of a return-to-duty test, the Substance Abuse Professional shall recommend to the employer the number and frequency of follow-up alcohol and/or drug tests to be administered following the driver's return to duty. The follow-up testing shall consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. The Substance Abuse Professional shall recommend whether the driver should be subject to both drug and alcohol follow-up tests. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-100. Employee assistance program.**

The County will assist employees who test positive by providing information about treatment providers and programs to help the employees resolve their problems with drugs or alcohol. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-110. Types of testing.**

The County will perform the following types of drug and alcohol testing:

- A. Pre-employment testing (drug testing only).
- B. Reasonable suspicion testing.
- C. Post-accident testing.
- D. Random testing.
- E. Return-to-duty testing.
- F. Follow-up testing. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-120. Pre-employment testing.**

A. All applicants for and current employees seeking transfer to employment as a driver who will perform safety-sensitive functions will be informed in writing of the testing requirements and will undergo a pre-employment drug test. The County will not hire an applicant or transfer an employee to such a position unless the result of the applicant's or employee's drug test is negative. The County also will make reasonable efforts to contact each of the applicant's employers over the previous two-year period to determine if the employee has tested positive for either drugs or alcohol. The County will document this effort clearly and will maintain these records for a minimum of five (5) years. The applicant must provide a limited consent for the County to obtain this information. Failure to provide this consent will disqualify an applicant from employment or disqualify an incumbent employee's application for transfer to a position as a driver who performs safety-sensitive functions. If the driver has tested positive while previously employed, the County must verify that the driver completed a treatment program recommended by the Substance Abuse Professional and obtained a verified negative test result.

B. Consequences of positive test result. A positive pre-employment drug test shall be considered sufficient grounds to disqualify the applicant or incumbent employee from employment with the County in a position as a driver who performs safety-sensitive functions. All applicants or employees with a positive result will receive a referral to a Substance Abuse Professional. Pursuant to County policy, an incumbent employee whose drug test result is positive will be subject to the same consequences as an employee whose random drug test was positive.

C. The County will not assign an applicant or incumbent employee who has refused to take or failed a pre-employment drug test to a position as a driver who performs safety-sensitive functions. If such an applicant or employee later applies for such a position, the County will administer another pre-employment drug test. If the employee or applicant passes the second pre-employment test, the County may, in its sole discretion, assign and/or hire the employee or applicant to work in a position as a driver who performs safety-sensitive functions. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-130. Reasonable suspicion testing.**

A. Drivers who perform safety-sensitive functions will be required to submit to a drug or alcohol test when the County has a reasonable suspicion that the driver has used a prohibited drug or misused alcohol. Reasonable suspicion is established if a supervisor trained in detecting the signs of alcohol misuse and drug use reasonably concludes, based on his or her observations, that the driver has used drugs or misused alcohol. The determination that reasonable suspicion to test exists shall be based on specific, contemporaneous, articulable 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.

B. The County will direct a driver to undergo reasonable suspicion testing for alcohol only if such observations are made during, just preceding or just after the period of the workday that the driver is required to comply with the driver alcohol use prohibitions. The alcohol test may be administered only just before, just after or during the period the driver is to perform a safety-sensitive function. A driver ordered to submit to reasonable suspicion testing shall be transported to the screening site by a supervisor or other person designated by the supervisor. A reasonable suspicion test for alcohol must be performed within eight (8) hours following a determination that reasonable suspicion to test exists. If a reasonable suspicion test is not performed within two (2) hours after such a determination, the County will prepare and maintain a record stating the reasons the test was not promptly administered. No driver suspected of alcohol misuse, as shown by the behavioral, speech or performance indicators of alcohol misuse, may perform or continue to perform safety-sensitive functions until an alcohol test is administered evidencing a blood alcohol concentration of less than 0.02, or at least twenty-four (24) hours have elapsed following the administration of the reasonable suspicion test. A written record of the observations leading to a controlled substance or alcohol reasonable suspicion test shall be made and signed by the supervisor or company official within twenty-four (24) hours of the observation or before the test results are released, whichever is earlier.

C. Under the authority of the County, a driver who undergoes reasonable suspicion testing will be removed from service pending the test results on a status of "administrative leave with pay." If the test results are negative, the driver will be returned to work (without loss of pay).

D. Consequences of positive test result. Pursuant to County policy, if the reasonable suspicion drug or alcohol test result is positive, the driver will be removed from the safety-sensitive position on a status of "leave without pay," referred to a Substance Abuse Professional and subject to discipline, up to and including termination, pursuant to this Code. For the duration of the leave without pay, the driver cannot utilize any accrued sick or vacation leave. At a minimum, the driver shall be subject to the same consequences applied to drivers following a positive random test. If the driver is not terminated, the driver shall be subject to the same requirements regarding assessment, rehabilitation, return-to-duty and follow-up testing applied to drivers following a positive random test. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-140. Post-accident testing.**

A. Each surviving driver who was performing a safety-sensitive function with respect to the vehicle will be tested for both drugs and alcohol if the accident involved the loss of a human life. Additionally, each driver will be tested for both drugs and alcohol who receives a citation under state or local law for a moving traffic violation arising from the accident, where the accident resulted in an injury requiring immediate medical treatment away from the scene or disabling damage to any motor vehicle that requires towing services.

B. Tests for the use of prohibited drugs and misuse of alcohol will be administered as soon as practicable following an accident involving a commercial motor vehicle. Drug tests must be performed within thirty-two (32) hours following an accident. If the drug test is not administered within thirty-two (32) hours, the County will cease efforts to test for drugs and will prepare and maintain on file a record stating the reasons the test was not promptly administered. Alcohol tests should be performed within two (2) hours following an accident, but in no instance later than eight (8) hours following an accident. A driver subject to post-accident testing must refrain from consuming alcohol for eight (8) hours following the accident or until he or she submits to an alcohol test, whichever comes first. If the driver has not submitted to an alcohol test within two (2) hours of the accident, the County will prepare and maintain on file a record stating the reason that the test was not administered promptly. If the alcohol test is not administered within eight (8) hours after the accident, the County will cease efforts to administer the test and will maintain the same documents.

C. The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances, conducted by federal, state or local officials having independent authority for the test, shall be considered to meet the requirements of this Section, provided that such tests conform to applicable federal, state or local requirements and the results of the tests are obtained by the County.

D. These testing requirements will not delay necessary medical attention for injured persons, nor will they prohibit a driver who was performing a safety-sensitive function from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care. Drivers performing safety-sensitive functions, however, must remain readily available for testing for thirty-two (32) hours. This means the driver must ensure that the County knows the driver's location for at least a thirty-two-hour period following an accident or until post-accident drug and alcohol tests have been completed. A driver who is not available for testing will be considered to have refused to submit to testing unless his or her unavailability is attributable to efforts to obtain assistance in responding to the accident or obtaining necessary emergency medical care. Drivers will be provided with necessary post-accident information, procedures and instructions prior to operating a commercial motor vehicle so they will be able to comply with this policy.

E. Consequences of positive test result. Pursuant to County policy, if the result of either test is positive, the driver will be removed from his or her safety-sensitive position on a status of "leave without pay," referred to a Substance Abuse Professional and subject to discipline, up to and including termination, pursuant to this Code. For the duration of the leave without pay, the driver cannot utilize any accrued sick or vacation leave. At a minimum, the driver shall be subject to the same consequences applied to drivers following a positive random drug or alcohol test. If the driver is not terminated, the driver shall, at a minimum, be subject to testing applied to drivers following a positive random test. (Weld County Code Ordinance 2003-3)

### **Sec. 3-14-150. Random testing.**

A. Random testing will be conducted for all drivers performing safety-sensitive functions at a rate established by law. Random tests will be unannounced and spread reasonably throughout the year. There will be no pattern to when random tests will be conducted and all drivers who perform safety-sensitive functions will have an equal chance of being selected for testing from the random pool each time random tests are conducted. Drivers shall remain in the pool even after being selected and tested. Therefore, a driver may be selected for a random test more than once during a year.

B. Drivers will be selected anonymously using an identification number having no correlation to actual employee names. The driver must report to the collection site immediately after receiving notification of his or her selection from the random pool. It is the responsibility of the Medical Review

Officer contractor to maintain the database of drivers who perform safety-sensitive functions and to perform the random selection of drivers to be tested each testing cycle. In the event a randomly selected driver is absent from work on the day his or her test is scheduled, the driver may be notified at any time during the selection period. If the driver is gone for an extended period of time, an alternate driver shall be randomly selected for testing, the originally randomly selected driver shall be placed back in the pool and the number of those drivers randomly selected in the next selection period shall be increased accordingly.

C. In the event it is necessary to collect a urine specimen from a driver for random testing outside his or her regular work hours, the driver will be paid for the extra time at the applicable rate. A driver will be subject to random testing for alcohol only while the driver is performing safety-sensitive functions or just before or just after performing safety-sensitive functions.

D. Consequences of positive test result. Pursuant to County policy, a driver whose random drug test is positive or whose alcohol test result is 0.04 or greater will be immediately removed from his or her safety-sensitive position on a status of "leave without pay," referred to a Substance Abuse Professional and subject to discipline, up to and including termination, pursuant to this Code. For the duration of the leave without pay, the driver cannot utilize any accrued sick or vacation leave. Furthermore, the driver will be subject to disciplinary action, up to and including termination, pursuant to this Code. (Weld County Code Ordinance 2003-3)

#### **Sec. 3-14-160. Return-to-duty testing.**

A. A driver who receives a verified positive drug test result or an alcohol test result of 0.04 or greater, who refuses to submit to any test or who improperly uses alcohol while on duty or after an accident (before post-accident testing is complete) may not return to work until the driver is: (1) referred for evaluation by a Substance Abuse Professional who determines that the driver has followed any treatment program prescribed by the Substance Abuse Professional; and (2) passes a return-to-duty test. A return-to-duty test may be performed after the Substance Abuse Professional indicates that the driver has completed or is following any prescribed treatment program. In the return-to-duty evaluation, the Substance Abuse Professional also shall determine the frequency and duration of follow-up testing after the driver returns to duty. The Substance Abuse Professional may recommend that the driver be subject to a return-to-duty test for both drugs and alcohol even if the employee only tested positive for one (1) or the other. To pass the return-to-duty test, the result must be a verified negative drug test result and/or an alcohol test result of less than 0.02.

B. Consequences of positive test result. Any positive return-to-duty drug test taken at the driver's expense, or return-to-duty alcohol test with a result of 0.02 or higher, taken at the driver's expense, will subject the driver to disciplinary action, up to and including termination, pursuant to this Code. (Weld County Code Ordinance 2003-3)

#### **Sec. 3-14-170. Follow-up testing.**

A. Drivers permitted to return to duty are subject to unannounced follow-up testing. The Substance Abuse Professional shall determine the frequency and duration of the follow-up testing. A minimum of six (6) follow-up tests during the first twelve (12) months after the driver returns to duty will be performed at the driver's expense. The testing period shall not exceed sixty (60) months from the driver's return-to-duty. Follow-up testing is separate from and in addition to the regular random testing program. Accordingly, drivers subject to follow-up testing will remain in the standard random pool and will be tested whenever their names come up for random testing, even if this means being tested twice in the same day, week or month.

B. The Substance Abuse Professional may recommend that the driver be subject to follow-up testing for both drugs and alcohol even if the driver only tested positive for one (1) or the other. Therefore, a driver who is subject to follow-up drug tests may be required to take one (1) or more follow-up alcohol tests with a result of less than 0.02. If the driver is subject to follow-up alcohol tests, he or she may be required to take one (1) or more follow-up drug tests with a verified negative result. Follow-up alcohol testing will be conducted only when the driver is performing safety-sensitive functions or just before or just after the driver performs such functions.

C. Consequences of positive test result. Any positive test result for a driver subject to follow-up testing (including the positive result of a safety-sensitive job transfer, random, reasonable suspicion, post-accident or other test), with the test being taken at the driver's expense, will subject the driver to disciplinary action, up to and including termination, pursuant to this Code. (Weld County Code Ordinance 2003-3)

### **Sec. 3-14-180. Consequences for engaging in drug- and alcohol-related conduct.**

A. Controlled substances. A driver who tests positive for drugs or refuses to submit to a drug test must be removed from performing safety-sensitive functions immediately on a status of "leave without pay." For the duration of the leave without pay, the driver cannot utilize any accrued sick or vacation leave. A verified positive drug test may subject the driver to discipline, up to and including termination, pursuant to this Code. A driver who tests positive for drugs or refuses to submit to a drug test may not perform a safety-sensitive function until he or she has been referred for evaluation by a Substance Abuse Professional, completed any recommended treatment, been informed of education/treatment programs for controlled substance abuse, and taken a return-to-duty drug test at the driver's expense with a verified negative result. The County retains the right to terminate or otherwise discipline a driver who tests positive for drugs or refuses to submit to a drug test.

B. Alcohol. A driver who has an alcohol concentration of 0.02 or greater but less than 0.039 (a nonpositive alcohol test) must: (1) be removed from safety-sensitive functions, on a status of "leave without pay," until the start of the driver's next regularly scheduled duty period, to begin not less than twenty-four (24) hours following administration of the alcohol test; (2) be informed of education/treatment programs for alcohol misuse and abuse; and (3) sign the statement on the alcohol testing form acknowledging that he or she shall not perform safety-sensitive functions or operate a motor vehicle during this period. A driver whose alcohol test reveals an alcohol concentration of 0.04 or greater may not perform a safety-sensitive function until he or she has been referred for evaluation by a Substance Abuse Professional, completed any recommended treatment and passed a return-to-duty test, at the driver's expense, with an alcohol concentration of less than 0.02. The County retains the right to terminate or otherwise discipline a driver who tests positive for alcohol or refuses to submit to an alcohol test. (Weld County Code Ordinance 2003-3)

### **Sec. 3-14-190. Retesting at driver's request.**

A. U.S. Department of Transportation regulations provide for a split sample procedure which requires a portion of each urine specimen to be retained in a separate, sealed container. A driver whose urine test is positive may request that the split sample be tested at a separate laboratory approved by the U.S. Department of Health and Human Services. U.S. Department of Transportation regulations require that the driver make such a request within seventy-two (72) hours of learning of a verified positive test. (In the event a driver fails to make a timely request, the driver must present information to the Medical Review Officer documenting that serious illness, injury, inability to contact the Medical Review Officer, lack of actual notice of the verified positive result or other circumstances unavoidably prevented the driver from timely contacting the Medical Review Officer. If the Medical Review Officer concludes that

there is a legitimate explanation for the driver's failure to contact the Medical Review Officer within seventy-two (72) hours, the Medical Review Officer shall initiate a test of the split specimen.)

B. Pursuant to County Policy, unless the result of the split sample test invalidates the result of the original test, all costs associated with split sample testing will be the responsibility of the driver, including the costs of shipping and handling, transportation, testing and reporting to the Medical Review Officer. The County will assure that the split sample is tested in a timely manner if the employee cannot pay; however, the driver will reimburse the cost of the testing process to the County. If the result of the split sample test is negative, these costs will be assumed by the County. Additionally, if the result of the split sample test is negative, the driver will be reinstated with no loss of seniority and paid for lost back wages. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-200. Notification of convictions.**

Pursuant to the requirements of the Drug-Free Workplace Act, all employees and drivers must notify the County within five (5) days of any criminal drug statute conviction for a violation occurring in the workplace. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-210. Contact person.**

FMCSA regulations require that a single contact person be identified to answer questions about this policy. For the purposes of this policy, the contact person will be the Designated Employer Representative, the Drug and Alcohol Testing Program Administrator at the Weld County Department of Human Resources, 915 10th Street, Greeley, Colorado 80631, who may be reached at (970) 356-4000, Ext. 4234. Copies of relevant regulations also are available at the Department of Human Resources. (Weld County Code Ordinance 2003-3; Weld County Code Ordinance 2007-4)

**Sec. 3-14-220. Effects of alcohol.**

FMCSA regulations require that written drug and alcohol policies include a discussion of the effects of alcohol misuse. That information is contained in the "Effects of Alcohol Fact Sheet," attached to this Code as Appendix 3-B, which appeared as part of the "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit," issued by the FTA Office of Safety and Security. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-230. Effects of controlled substances.**

FMCSA regulations require that written drug and alcohol policies contain a discussion of the effects of controlled substance use. That information is contained in controlled substance "Fact Sheets" available at the Department of Human Resources which appeared as part of the "Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit," issued by the FTA Office of Safety and Security. (Weld County Code Ordinance 2003-3; Weld County Code Ordinance 2007-4)

**Sec. 3-14-240. Education and training.**

Supervisors responsible for determining when to administer reasonable suspicion tests will receive training on this issue. This training will consist of at least sixty (60) minutes for alcohol awareness training and at least sixty (60) minutes for drug awareness training. (Weld County Code Ordinance 2003-3)

**Sec. 3-14-250. Record keeping.**

The County will strictly adhere to all standards of confidentiality and assure all employees that testing records and results will be released only to those authorized by FMCSA rules to receive such information. All drug and alcohol testing records will be maintained in a secure manner so that disclosure of information to unauthorized persons does not occur. Privacy of each tested employee shall be strictly maintained. (Weld County Code Ordinance 2003-3)