

ORDINANCE NO. 1995(11)

AN ORDINANCE OF HOPKINS COUNTY, KENTUCKY, RELATING TO
COMMERCIAL DRIVERS LICENSE ALCOHOL AND DRUG TESTING POLICY FOR
HOPKINS COUNTY

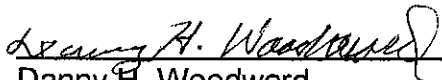
WHEREAS, the governing body of Hopkins County, the Hopkins County Fiscal Court, has been notified by the Kentucky Association of Counties that the Federal Highway Administration Regulations require that each county have a policy adopted by January 1, 1996, providing for random alcohol and drug testing for employees who hold a commercial drivers license. And

WHEREAS, the Court has developed a policy concerning both random alcohol and drug testing.

NOW THEREFORE, BE IT ORDAINED by the Fiscal Court of Hopkins County that the Hopkins County Commercial Drivers Licensing Random Alcohol and Drug Testing Policy, a copy of which is attached hereto, is adopted pursuant to the Federal Highway Administration Regulations (49CRF part 682).

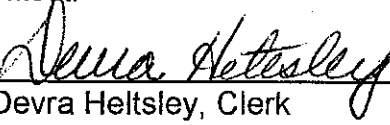
This Ordinance shall become effective upon passage.

UPON MOTION by Magistrate Stanley, seconded by Magistrate Purdy, first reading was held and approved on the 21st day of December, 1995.



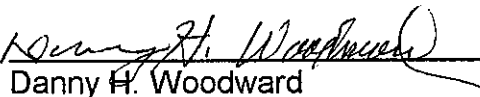
Danny H. Woodward
Hopkins County Judge/Executive

Attest:



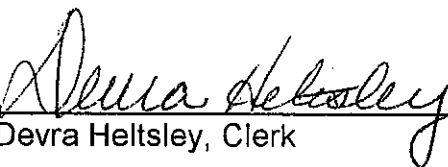
Devra Heltsley, Clerk

ON MOTION of Magistrate Welch and Seconded by Magistrate Martin,
second reading held on the 4th day of January, 1996, and passed on the 4th day of
January, 1996.



Danny H. Woodward
Hopkins County Judge/Executive

Attest:



Devra Heltsley, Clerk

COPY

HOPKINS COUNTY
RANDOM (CDL) ALCOHOL
AND DRUG TESTING
COMPLIANCE POLICY AND PLAN

I. Statement of Philosophy

A. Drugs and Alcohol in the Workplace - The objective and purpose of Hopkins County's Drug and Alcohol Policy is to ensure a safe, drug-free and alcohol-free, working environment for the employees and citizens we serve. It is our intention to prohibit drug use and alcohol misuse in the work place. A copy of the policy shall be provided to every safety-sensitive employee. The policy shall be in accordance with the provisions, requirements and regulations of the Federal Highway Administration Drug and Alcohol Rule (49 CFR part 682, and subpart 40).

B. Employment Terms - Any employee who receives a positive result from one or both of the testing procedures (alcohol and drugs) will be suspended for a period of thirty (30) days, during which the employee must undergo professional counseling for the problem. The employee must submit to retesting before resuming employment. Compliance with this policy is a condition for initial and/or continuing employment with the Hopkins County Government.

II. Scope

A. Employees Subject to Testing - All employees who hold commercial drivers licenses are subject to testing and other requirements of this policy.

B. Alcohol - The new alcohol rule prohibits any alcohol misuse that could

affect performance of a safety-sensitive function, including:

1. Use while performing safety-sensitive functions.
2. Use during the four (4) hours before performing safety-sensitive functions.
3. Reporting for duty or remaining on duty to perform safety-sensitive functions with an alcohol concentration of 0.04 or greater.
4. Possession of alcohol while at work or on County property.
5. Use during eight (8) hours following an accident, or until he/she undergoes a post-accident test.
6. Refusal to take a required test.

C. Controlled substances - The regulations prohibit any drug use that could affect performance of safety-sensitive functions, including:

1. Use of any drug, except by doctor's prescription, and then only if the doctor has advised the driver that the drug will not adversely affect the driver's ability safely operate the CMV.
2. Testing positive for drugs.
3. Refusal to take a required test.

All drivers will inform the alcohol and drug program administrator of any therapeutic drug use prior to performing a safety-sensitive function.

III. Qualifications for Employment and Prohibited Conduct

A. Pre-Employment/Pre-Duty Testing - All driver applicants will be required to submit to and pass a breath alcohol test and a urine drug test as a condition of employment. Job applicants who are denied employment because of a positive test, may reapply for employment after six months.

Offers of employment are made contingent upon passing the County's medical review, including the alcohol and drug test. Driver applicants who have received

firm employment offers are to be cautioned against giving notice at their current place of employment, or incurring any costs associated with accepting employment with the County until after the medical clearance has been received. All newly hired drivers shall be on probationary status for thirty (30) days, contingent upon medical clearance of illicit controlled substance or alcohol usage, as well as other conditions explained in the personnel policies. Under no circumstances may a driver perform a safety-sensitive function until a confirmed negative result is received.

Driver applicant drug testing shall follow the collection, chain-of-custody and reporting procedures as set forth in CFR 49 Part 40.

B. POST-ACCIDENT - Currently, federal regulations place the burden of compliance with post-accident alcohol and drug testing regulations on the driver. Therefore, all drivers are required to provide a breath test and a urine specimen to be tested for the use of controlled substances "as soon as practicable" after the accident. The driver shall remain readily available for such testing or may be deemed by the alcohol and drug program administrator to have refused to submit to testing. No alcohol may be consumed for eight (8) hours after the accident or until a test is conducted. If the driver is seriously injured and cannot 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.

An accident is defined by FHWA regulations as an accident which results in the death of a human being or bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident. Except for a fatality accident, verification of the driver's responsibility, in the above accident scenario must be established by a citation to the driver.

C. Random Testing - The County will conduct random testing for all covered driver's as follows:

1. A government-wide selection which removes discretion in selection from any supervisory personnel will be adopted by the County. This process will select covered drivers through the use of a random-selection program.

2. The random testing, once begun, will provide for alcohol testing of at least twenty-five percent (25%) and for drug testing of at least fifty percent (50%) of all covered drivers.

3. The random testing will be reasonably spaced over any twelve (12) month period.

4. The alcohol and drug program administrator will be responsible for designating the appropriate substance abuse professional who, in conjunction with the driver's physician, will diagnose the problem and recommend treatment.

5. The driver's successful completion of the approved treatment program is a condition of continued employment as a driver.

6. All supervisors will receive training to assist them in identifying alcohol and drug use behavioral characteristics.

D. Reasonable Suspicion - If a driver is having work performance problems or displaying behavior that may be alcohol or drug related, or is otherwise demonstrating conduct that may be in violation of this Policy where immediate management action is necessary, a supervisor, with the concurrence of the alcohol and drug program

administrator, will require that driver to submit to a breath test or urinalysis. The following conditions are signs of possible alcohol or drug use (not all-inclusive):

- * Abnormally dilated or constricted pupils
- * Glazed stare - redness of eyes (sclera)
- * Flushed face
- * Change of speech (i.e. faster or slower)
- * Constant sniffing
- * Increased absences
- * Redness under nose
- * Sudden weight loss
- * Needle marks
- * Change in personality (i.e. paranoia)
- * Increased appetite for sweets
- * Forgetfulness - performance faltering - poor concentration
- * Borrowing money from coworkers or seeking an advance of pay or other unusual display of need for money
- * Constant fatigue or hyperactivity
- * Smell of alcohol
- * Slurred speech
- * Difficulty walking
- * Excessive, unexplained absences
- * Dulled mental processes
- * Slowed reaction rate

Supervisors must take action if they have reason to believe one or more of the above listed conditions is indicated, and that the substance abuse is affecting a driver's job performance or behavior in any manner. A supervisor observing such conditions will take the following actions immediately:

Confront the employee involved and keep under direct observation until the situation is resolved.

Secure the alcohol and drug program administrator's concurrence to

observations; job performance and county policy violations must be specific.

After discussing the circumstances with the supervisor, the alcohol and drug program administrator will arrange to observe or talk with the driver. If he/she believes, after observing or talking to the driver, that the conduct or performance problem could be due to substance abuse, the driver will be immediately required to submit to a breath test or urinalysis. If the driver refuses to submit to testing for any reason, the driver will be informed that continued refusal will result in disqualification from performing any safety-sensitive function.

Employees will be asked to release any evidence relating to the observation for further testing. Failure to comply may subject the employee to subsequent discipline or suspension from driving duties. All confiscated evidence will be receipted for with signatures of both the receiving supervisor, as well as the driver.

If upon confrontation by the supervisor, the driver admits to use but requests assistance, the alcohol and drug program administrator will arrange for assessment by an appropriate substance abuse professional. Reassignment to the driver position is conditional to completing the substance abuse professional's guidelines and return to work testing.

E. Return-to-Duty Testing - Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this policy and Part 382 Subpart B(FMCSR), the driver shall undergo a return to duty alcohol test with a result of less than a 0.02 BAC or receive a confirmed negative result from a controlled substance urinalysis test.

F. Follow-up Testing - Following successful completion of any approved treatment program, the driver will be required to submit to at least six random drug tests during the first year (at employee's expense), and follow-up testing may be conducted for up to 60 months. Failure to adhere to this condition is grounds for immediate termination.

V. Alcohol Testing Methodology/Testing

The Breath Alcohol Test - This test will be conducted either on site or at a prearranged location by a qualified Breath Alcohol Technician according to CFR 49 Part 40 procedures. Refusal to complete and sign the testing form or refusal to provide breath will be considered a positive test, and the driver will be removed from a safety-sensitive function until the problem is resolved.

VI. Specimen Collection Procedures

Urine Specimen Collection (49 CFR Part 40 requirements) - Specimen collection will be conducted in accordance with applicable state and federal laws. The collection procedures will be designed to ensure the security and integrity of the specimen provided by each driver, and those procedures will strictly follow federal chain-of-custody guidelines. Moreover, every reasonable effort will be made to maintain the dignity of each driver submitting a specimen for analysis in accordance with these procedures.

VII. Testing Methods

Appropriate Laboratory - Certified by the Federal Department of Health and Human Services - As required by FHWA regulations, only a laboratory certified by U.S. Department of Health and Human Services (DHHS) to perform urinalysis for the detection of the presence of controlled substances will be retained by the County. The laboratory will be required to maintain strict compliance with federally approved chain-of-

custody procedures, quality control, maintenance and scientific analytical methodologies.

VIII. Confidentiality and Recordkeeping

A. Confidentiality and Access to Records - Under no circumstances, unless required or authorized by law, with alcohol or drug testing information or results for any employee or applicant be released without written request from the applicable employee. Drivers are entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests.

B. Maintenance and Disclosure of Records concerning EBTs and BATs

- Collection of breath and urine samples must always be documented and sealed with a tamper-proof sealing system in the presence of the driver, to insure that all tests can be correctly traced to the driver. Drug test analysis from the DHHS approved laboratory will be forwarded directly to the alcohol and drug program administrator. Alcohol test results will be forwarded to the alcohol and drug program administrator for confidential recordkeeping.

IX. Employee Assistance Program (EAP)

A. Employee Education and Training - The County shall establish an EAP program. It shall include an educational and training component for drivers which addresses controlled substances and includes the following elements:

1. The effects and consequences of controlled substance use on personal health, safety, and the work environment;
2. The manifestations and behavioral changes that may indicate controlled substance use or abuse;
3. Documentation of training given to drivers and supervisors.

EAP training for all drivers and supervisors must be at least 60 minutes of training and may include seminars, audio tapes, reading material and videos.

B. Supervisors Training - The EAP shall include an educational and training component for supervisory personnel and government officials which addresses controlled substances and may include the following:

1. The impact of drug use in the workplace;
2. A working knowledge of the county's anti-drug policy, testing procedure, positive test policy, and rehabilitation and assistance resources;
3. Recognition of signs and symptoms of substance abuse and profiles of at-risk employees;
4. Understanding what constitutes reasonable cause for drug or alcohol testing and the ability to document those circumstances;
5. Methods of confronting suspected drug and alcohol abusers;
6. The individual's right to privacy and confidentiality and how it applies to this policy.

C. Referral, Evaluation and Treatment - All employees who test positive for either alcohol or drug presence shall be suspended from driving duties and referred to professional counseling assistance. Employee may request review of suspension after thirty days and providing proof of counseling.

D. Return to Duty and Follow-Up Testing - Retesting at employee's expense and with negative test results will be necessary before driving duties may be

resumed.

X. Recordkeeping and Reporting

A. Recordkeeping - All CST negatives and alcohol results below 0.02 must be retained for one (1) year. Records detailing collection procedure and training must be kept for two (2) years. All records dealing with test results of alcohol results above 0.02 and all refusals to be tested must be retained for five (5) years. All drug test records from positive tests and all refusals to be tested must be retained for five (5) years.

B. Annual Reporting - The County shall maintain an annual summary, on a calendar year basis, of the following information:

1. The total number of controlled substance tests administered;
2. The number of controlled substance test administered in each category (i.e., pre-employment, periodic, reasonable cause and random);
3. The total number of individuals who did not pass a controlled substance test;
4. The total number of individuals who did not pass a controlled substance test by testing category;
5. The disposition of each individual who did not pass a controlled substance test;
6. The number of controlled substances test performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the screening test in a sufficient quantity to warrant a conformatory test;
7. The number of controlled substance tests performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the conformatory test in a sufficient quantity to be reported as a "positive" finding;
8. The number of controlled substance tests that were performed by a laboratory that indicated evidence of a prohibited controlled substance in a sufficient quantity to be reported as a "positive" by a substance category.

APPENDIX A

DRIVER NOTIFICATION LETTER

I certify that I have received a copy of, and have read the above Hopkins County policy on Alcohol and Drug Testing procedures. I understand that as a condition of employment as a driver, 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 Hopkins County, I will seek assistance through the current alcohol and drug testing program administrator.

Date

Employee signature

APPENDIX B (continued)

4. Appointment instructions/comments:

I understand as a condition of my employment with this county, the above identified test is required.

Date

Driver/Applicant's signature

Date

County Representative

APPENDIX C

OBSERVED BEHAVIOR
REASONABLE SUSPICION RECORD

Driver's name: _____
Date observed: _____
Time observed (from/to): _____
Address of Incident (street, city, state, zip code): _____

Reasonable suspicion determined for: _____ alcohol _____ controlled substances

Mark items that apply and describe specifics

1. APPEARANCE: normal _____ sleepy _____ tremors _____ clothing _____ cleanliness _____

Description: _____

2. BEHAVIOR: normal _____ erratic _____ irritable _____ inappropriate gaiety _____ mood swings _____
lethargic _____

Description: _____

3. SPEECH: _____

Description: _____

4. BODY ODORS: _____

5. INDICATIONS OF THE CHRONIC AND WITHDRAWAL EFFECTS OF CONTROLLED
SUBSTANCES: _____ YES _____ NO

Explain: _____

6. OTHER OBSERVATIONS FOR REASONABLE SUSPICION;

WITNESSED BY:

Signature and title _____ Preparation Date and Time _____

Signature and Title _____ Preparation Date and Time _____

THE ALCOHOL TEST MUST BE ADMINISTERED WITHIN EIGHT HOURS
FOLLOWING A REASONABLE SUSPICION DETERMINATION

APPENDIX D

ALCOHOL AND CONTROLLED SUBSTANCE
EMPLOYEE'S CERTIFIED RECEIPT

Employees Name: _____
County/Department: _____

This is to certify that I have been provided educational materials that explain the requirements of Subsection 382.601 and my employer's policies and procedures with respect to meeting the requirements. The materials include detailed discussion of the following checked items.

- ___ 1. The designated person to answer questions about the materials.
- ___ 2. The categories of drivers subject to Part 382.
- ___ 3. Sufficient information about the safety-sensitive functions and periods of the workday that compliance is required.
- ___ 4. Specific information concerning prohibited driver conduct.
- ___ 5. Circumstances under which a driver will be tested.
- ___ 6. Test procedures, driver protection and integrity of the testing procedures, and safeguarding the validity of the test.
- ___ 7. The requirement that test are administered in accordance with Part 382.
- ___ 8. An explanation of what will be considered a refusal to submit to a test and the consequences.
- ___ 9. The consequences for Part 382 Subpart B violations including removal from safety- sensitive functions and Subsection 382.605 procedures.
- ___ 10. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04.
- ___ 11. Information on the effects of alcohol and controlled substance use on:
 - an individual's health
 - work
 - personal life
 - signs and symptoms of a problem
 - available methods of intervening when a problem is suspected.
- ___ 12. Optional information:

Date

Employee's Signature

Date

Authorized Employer Representative