THE BOROUGH OF MENDHAM

PERSONNEL POLICIES & PROCEDURES MANUAL

The Borough of Mendham is an Equal Opportunity Employer.

ADOPTED 1/5/2023
RESOLUTION #004-2024

AMENDMENTS
RESOLUTION #084-2024 5/8/24

RESOLUTION #004-2024

RESOLUTION OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS, STATE OF

Section 4.
Personnel Rules and Regulations
REIMBURSEMENT FOR WORK EXPENSES & MILEAGE

Supplies and Miscellaneous Purchases

- Any employee who makes an authorized purchase for Borough supplies and other miscellaneous items utilizing personal funds shall be reimbursed for authorized expenses.
- The employee must provide the supporting receipts for purchases to the Department Head or designee.
- Prior to the expenditure of personal funds, the employee must receive approval from the appropriate Department Head to be eligible for reimbursement.

Personal Vehicle Mileage

- Borough employees who are authorized to use their personal vehicle shall be reimbursed at the rate established under the then-existing regulation of the Internal Revenue Service.
- Reimbursement requests must be made on Borough forms and submitted monthly.
- Each employee who drives a private vehicle on Borough business must have liability insurance on said vehicle.

Use of Borough Vehicle

- When available, Borough employees shall utilize a Borough vehicle when required or authorized to perform their work duties, attend a meeting, continuing education course, CEU course, training event, or seminar or work-related training.
- If a Borough vehicle is not available, the Department Head or Borough Administrator or designee may authorize the employee to use their personal vehicle.

- The Borough owns and maintains a fleet of vehicles ("Borough Vehicles") that are used in the operations of the Borough.
- This policy governs the use of all Borough Vehicles, except for vehicles utilized for law enforcement purposes by collective bargaining agreement employees.

Violation

- Any employee violating the provisions contained herein shall be subject to disciplinary action, up to and including termination, in accordance with applicable laws and regulations.
- Violations of this policy may also result in the denial of indemnification and/or defense by the Borough to the employee in any civil or criminal matter brought in any Court arising from improper use of a Borough vehicle.
- The Borough also expressly reserves its right to seek indemnification and/or contribution from employees (including their personal automobile insurance policies) found to have acted in violation of this policy to the maximum extent permitted by law.

Driving Privileges and Licensure.

- The use of a Borough Vehicle by an employee is subject to the approval and discretion of the Borough Administrator or designee.
- Any employee operating a Borough Vehicle must have, in their possession, a valid driver's license issued by a state regulatory body within the United States.
- Licenses issued by any territory or possession of the United States, the District of Columbia, or any international agency (including any province of the Dominion of Canada) must be expressly approved by the Borough's insurance carrier before an employee shall be permitted to operate a Borough Vehicle.
- Employees are required to file a copy of a valid driver's license with their Department Head prior to the use of a Borough Vehicle.
    - Upon the request of the Department Head, an employee must provide a copy of their driver's license or other required documents within twenty-four (24) hours of said request.
    - Employees shall inform their Department Head within twenty-four (24) hours of any changes in the status of their driving privileges.
    - Failure to comply with the requirements of this section shall result in an immediate suspension of an employee's privilege to operate a Borough vehicle and may also result in the denial of indemnification and/or defense by the Borough to the employee in any civil or criminal matter brought in any Court arising from the use of a Borough vehicle while said employee's driving privileges were suspended or revoked.
- The Borough reserves the right to obtain a driving abstract record from the New Jersey Motor Vehicle Service Commission or other regulatory and law enforcement agencies.
    - The Borough reserves the right to suspend an employee's Borough driving privileges if the Borough deems necessary based on the employee's driving record.
    - The Borough shall utilize information obtained pursuant to this section only for the purposes of furthering the objectives of this Policy and for no other reason and will not reveal personal or other information contained in an employee's driving abstract record to any party except where required

by applicable law.

Driving Course

- The Borough occasionally offers safe driving courses and reserves the right to compel employee attendance at such courses.
- If requested by their Department Head, the employee must agree to consent to a simulated road test to determine his/her fitness to safely operate a vehicle.

Under Influence of Medication

- If the employee is under the influence of any medication (prescribed or over the counter) that might impair their ability to safely operate a vehicle, they must refrain from driving until they notify the Borough and await clearance to resume driving.

Vehicle Use Policy

- The use of Borough Vehicles is restricted to official Borough business only.
- Employees shall not be permitted to use Borough vehicles for travel or activity unrelated to Borough business.
- No Department Head may authorize use of a Borough Vehicle for other than Borough business or use which is otherwise inconsistent with this policy.
- No employee shall authorize or permit any non-Borough employee, including but not limited to family members of the employee, to operate or ride as a passenger in any Borough vehicle assigned to the employee, unless said passengers are assisting in the official business of the Borough.
- Any employee parking a Borough vehicle at their residence must always provide safe parking for the vehicle.

Temporary Assigned Take-Home Vehicle

- In the event an employee with a take-home vehicle is to be absent from duty for more **than two (2) working days, or more than five (5) consecutive days, including weekends and holidays,** the vehicle shall be returned to their Department.
- The assignment of Borough Vehicle to take home on a temporary basis does not entitle the employee to compensation or pay for driving to and from work does.
- All non-collective bargaining agreement employees that do not hold a position assigned a take-home vehicle under this policy shall require written permission of the Borough Administrator and is required to take a Borough Vehicle home at night on a temporary basis.

Positions Assigned Take-Home Vehicles:

- Due to being always on-call, only the Chief of Police, Borough Administrator, Public Works Superintendent and Water Reclamation Facility Superintendent may have assigned 24/7 designated take-home vehicles.

Accidents and Incidents

- Prior to operation of any Borough vehicle, employees must consult their Department Head as to the appropriate steps to take if they become involved in an accident (filling out accident reports, obtaining witness names, etc.)
- In the event of an incident or accident involving the use of a Borough Vehicle, employees must immediately contact their supervisor and/or Department Head.
- All required reports and documentation must be submitted to the Borough Administrator and/or designee within two (2) business days of receipt.
- An employee may be required to submit to an alcohol or drug screening test following an accident or incident if there is a reasonable suspicion to believe that the employee's use of drugs or alcohol may have contributed to the cause of the accident or as otherwise required by law or other policy of the Borough.

Citations and Violations

- Drivers of Borough Vehicles are expected to follow all laws, regulations and rules proscribed by the Motor Vehicle Commission.
- **Moving Violations**
  - Drivers are responsible for paying any moving violation tickets and MUST notify the Borough of said violations within forty-eight (48) hours of receipt of said ticket, regardless of the employee's decision to contest such ticket in municipal court.
- **Parking Tickets**
  - Drivers are responsible for paying all parking tickets incurred.
  - The Borough should be notified of the receipt of a parking ticket within 48 hours of receipt of said ticket.
- **Notice of Delinquent Toll Payment Violation**
  - Drivers are responsible for all "Notice of Delinquent Toll Payment Violations" including but not limited to EZ-Pass.
  - Upon having been notified of said violation, either by direct mail or notice from the Borough, an employee shall, within ten (10) business days of such notice, provide acceptable proof to the Borough that the outstanding toll and any related fees have been paid.

General Policies and Procedures.

- Employees authorized to use a Borough Vehicle for official business must adhere to the policies and procedures set forth in this Policy. Failure to comply with the provisions below will result in a loss of privileges:
- **Possession of Required Documents**
  - Drivers must ensure that all required documents (driver's license, LD. badge/card, registration, insurance card) are in their possession while operating the vehicle.
  - Vehicle registration and insurance cards should be kept in a locked compartment of the vehicle when not in use.
- **Scheduling Repairs & Cleaning**
  - Employees assigned exclusive use of a Borough Vehicle are responsible for scheduling all repairs and manufacturer recommended maintenance with the Borough, including routine oil changes, to maintain all manufacturers' warranties.
  - Vehicles are to be always kept clean and should be washed and vacuumed regularly, unless prohibited by the New Jersey Department of Environmental Protection or other similar regulatory body.
- **No Smoking**
  - No Smoking is allowed in Borough Vehicles at any time.
- **Use of Handheld Phones/Electronic Devices**
  - In accordance with N.J.S.A. 39:4-97.3 and any other applicable statutes and regulations, the use of hand-held phones or electronic devices (including navigation systems, etc...) while driving Borough Vehicles is prohibited. This prohibition includes the sending or reading of e-mails, text messages and other similar communications.
- **Seat Belts Mandatory**
  - All occupants must always wear seat belts when the vehicle is in use and observe all road safe rules and regulations, such as "Wipers On, Lights On."

- **Tailgating**
    - Employees are expected to always operate vehicles in a safe and courteous manner and are expressly reminded to avoid tailgating or other unsafe practices.
- **Driving While Drowsy**
    - Employees are reminded of the risks inherent from driving while drowsy.
    - If a driver becomes tired while operating a vehicle, they shall pull off the road and seek appropriate assistance.
- **Certificate of Insurance if Drive Personal Vehicle Required**
    - Employees who drive their own vehicle for Borough business must provide the Borough with a copy of their current Certificate of Insurance.
- **Violation**
    - Violation of this policy may result in disciplinary action up to and including the suspension of the employee's privilege to operate a Borough Vehicle and/or termination.

- The Borough endeavors to provide a safe and healthy work environment for all employees and shall comply with the requirements of the Public Employees Occupational Safety and Health Act ("PEOSHA").
- The Borough is equally concerned about the safety of the public.

Safety Training & Equipment

- Consistent with this policy, employees will receive periodic safety training and shall be provided with appropriate safety equipment.
- Employees are responsible for observing safety rules and using available safety devices including personal protective equipment (PPE).

Reporting

- Any occupational or unsafe public condition, practice, procedure, or act must be immediately reported to the supervisor or Department Head.
- Any on-the-job accident or accident involving the Borough's facilities, equipment, or motor vehicles must also be immediately reported to the supervisor or Department Head.
- Failure to do so constitutes grounds for disciplinary action.
- The Department Head or supervisor must notify the Borough Administrator in writing of the report within forty-eight (48) hours.

Violation

- Failure to observe safety rules and use safety devices constitutes grounds for disciplinary action.

Section 4.
Personnel Rules and Regulations
CONTAGIOUS OR LIFE-THREATENING ILLNESS POLICY

Purpose

- The purpose of this policy is to support the physical and emotional health of all employees, minimize disruptions of productivity and morale caused by the presence of a worker with a life-threatening illness, and demonstrate the Borough's continued commitment to its affirmative action goals related to physically disabled employees.
- The Borough is committed to providing and maintaining a healthy and safety work environment which allows all employees to perform their jobs in a safe and productive manner.
- The Borough respects the dignity and worth of every employee through its Equal Opportunity Employment statement, which explains its policy and practice with respect to prohibiting discrimination in every phase of employment.
- The Borough provides support for individual employees who may be facing the trauma of a life-threatening or catastrophic illness.

Notification

- If an employee has learned that they have a contagious or life-threatening illness, including but not limited to HIV/AIDS, the employee shall be responsible for taking all steps to protect further spread of the disease or illness.
- The employee's Department Head should be notified of any illnesses that may affect the health, safety, and welfare of any co-employees or members of the public.
- Employees with such conditions, who can meet appropriate standards and whose continued employment does not pose a threat to their own health and safety or that of others, are assured equal employment opportunities and reasonable accommodations in their employment.
- If an employee is able to work, the employee is expected to be productive.
- If the employee cannot work, then the employee may be eligible for disability benefits.
- Consistent with the Borough's concern for employees with life-threatening illness, the Borough encourages employees to contact their Department Head or designee or Borough Administrator or designee to use the following resources the Borough offers through the Borough Administrator or designee:
    - Employee education and information on terminal illnesses and specific life-threatening illnesses.
    - Referral to agencies and organizations which offer supportive services for life-threatening illnesses.
    - Consultation in assisting employees in efficiently managing health, leave and other benefits.

Section 4.
Personnel Rules and Regulations
SMOKE FREE BUILDING POLICY "NO-SMOKING"

- The New Jersey Legislature has declared that in all governmental buildings the rights of nonsmokers to breathe clean air supersedes the rights of smokers.
- In accordance with State law, the Borough has adopted a smoke-free policy for all buildings.
- No employee or visitor shall be permitted to smoke anywhere in a Borough building or in any Borough vehicles.
- Employees are permitted to smoke only outside Borough buildings at such locations shall not allow the re-entry of smoke into building entrances.
- This policy shall be strictly enforced, and any employee found in violation shall be subject to disciplinary action.

Section 4.
Personnel Rules and Regulations
PERSONAL PET POLICY

Prohibited

- The presence of personal pets in the workplace may be disruptive, unsafe, non-hygienic and/or distracting, and individuals in the workplace may have allergies or fears of certain animals.
- Employees, volunteers, vendors, contractors, and other workers are prohibited from bringing personal pets to the workplace.

American with Disabilities Act (ADA)

- If an employee has a disability and needs to request an accommodation for a service animal pursuant to the Americans with Disabilities Act (ADA), the employee must follow the procedures found in the Borough's Americans with Disabilities Policy.

Section 4.
Personnel Rules and Regulations
PURCHASING POLICIES

Purchase Requisitions and Purchase Orders Required

- A Purchase Requisition must be entered into the Borough Finance System for all purchases by the Department.
- All Purchase Requisitions shall be approved in the Borough Finance System by the Department Head authorizing the purchase within the Department budget.
- All Purchase Requisitions shall be reviewed in the Borough Finance System by the designated Purchasing Agent and/or Administrator or designee for approval.
- Upon approval by the designated Purchasing Agent and/or Administrator or designee, the Purchase Requisition shall be approved in the Borough Finance System by the Chief Financial Officer or designee and converted to a Purchase Order and the funds certified by the Chief Financial Officer.
- The Department Head must certify in the Borough Finance System the goods and/or services have been received prior to processing payment to the vendor.

Vehicle, Large Equipment and Capital Purchases

- The Borough purchasing process for all departments' vehicles, large equipment, capital items, and Capital Improvement Projects shall be coordinated, implemented, managed, and completed by the Borough Purchasing Agent (QPA) or designee.
- Department heads or their designee shall collaborate, provide all information, and/or specifications required in a timely manner to the QPA for these types of purchases.

Financing of Purchases and Improvement Projects

- Only the Council by resolution may authorize leases or financing of any Borough purchase or improvement project.

Section 4.
Personnel Rules and Regulations
BOROUGH WEBSITE EMPLOYEE ACCESS & BULLETIN BOARD POLICY

Borough Website Employee Access Portal

- Each employee upon employment with the Borough shall be issued access to the Employee Access Portal.
- Posted on the Employee Access Portal shall be:
    - The Personal Policies and Procedures Manual and Updates
    - Access to Online Paystubs
    - Health Benefits Open Enrollment Information
    - Emergency Operations Plan
    - Access to Personnel/Payroll Leave Reporting System
    - Borough Holidays
    - Communications of notices regarding policies, procedures and information and forms pertinent to employee's employment.
    - Other appropriate employment information.

Bulletin Boards

- The bulletin boards located in the Borough workplace facilities are intended for the communication of official notices regarding policies, procedures, meetings, and special events.
- Unauthorized personnel may not post or remove or alter any Borough posted notices.

Section 4.
Personnel Rules and Regulations
VIDEO SURVEILLANCE CAMERA SYSTEM POLICY

Installation of System

- The Borough may install video surveillance camera systems within public buildings and throughout public areas within the Borough, primarily as visual deterrents of criminal behavior and for the protection of employees and municipal assets.
- In implementing these video surveillance camera systems, the Borough will ensure compliance with federal, state, and local laws governing such usage.

Use of System

- Only designated employees are permitted to use the video surveillance camera systems for a legitimate purpose and with proper authorization from the Borough Administrator or designee.

Maintenance of System

- Responsibility for the maintenance and administration of the video surveillance camera system shall be designated by the Borough Administrator.
- Including the maintaining of a user access log detailing the date and name of individuals who view/access a stored recording.

Improper Use of System

- The improper use of these systems can result in discipline up to and including termination.
- No employee is permitted to view, continually watch, search, copy or otherwise use one of the Borough's video surveillance camera systems or tamper with access, archive, alter, add to, or make copies of any data that has been recorded and stored within any of these systems without (l) a specific legitimate purpose and (2) permission from the Borough Administrator or designee.
- Any employee who becomes aware of any unauthorized disclosure of a video record in a contravention of this policy and/or a potential privacy breach has the responsibility to ensure that the Borough Administrator is immediately informed of such breach.

Section 4.
Personnel Rules and Regulations
DOMESTIC VIOLENCE POLICY

Purpose

- The purpose of the State of New Jersey Domestic Violence Policy for Public Employers (herein "policy") is to set forth a uniform domestic violence policy for all public employers to adopt in accordance with N.J.S.A. 11A:2-6a.
- The purpose of this policy is also to encourage employees who are victims of domestic violence, and those impacted by domestic violence, to seek assistance from their human resources officers and provide a standard for human resources officers to follow when responding to employees.
- This policy does not supersede applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General Directives and guidelines that impose a duty to report.
    - For example, if there is any indication a child may also be a victim, reporting is mandatory to the Department of Children and Families, Child Protection and Permanency, under N.J.S.A. 9:6-8.13.

Definitions

- **The following terms are defined solely for the purpose of this policy:**

Domestic Violence - Acts or threatened acts, that are used by a perpetrator to gain power and control over a current or former spouse, family member, household member, intimate partner, someone the perpetrator dated, or person with whom the perpetrator shares a child in common or anticipates having a child in common if one of the parties is pregnant. Domestic violence includes but is not limited to the following: physical violence; injury; intimidation; sexual violence or abuse; emotional and/or psychological intimidation; verbal abuse; threats; harassment; cyber harassment; stalking; economic abuse or control; damaging property to intimidate or attempt to control the behavior of a person in a relationship with the perpetrator; strangulation; or abuse of animals or pets.

Abuser/Perpetrator- An individual who commits or threatens to commit an act of domestic violence, including unwarranted violence against individuals and animals. Other abusive behaviors and forms of violence can include the following: bullying, humiliating, isolating, intimidating, harassing, stalking, or threatening the victim, disturbing someone's peace, or destroying someone's property.

Human Resources Officer (HRO) –An employee of a public employer with a human resources job title, or its equivalent, who is responsible for orienting, training, counseling, and appraising staff. Persons designated by the employer as the primary or secondary contact to assist employees in reporting domestic violence incidents.

Intimate Partner - Partners of any sexual orientation or preference who have been legally married or formerly married to one another, have a child or children in common, or anticipate having a child in common if one party is pregnant. Intimate partners also include those who live together or have lived together, as well as persons who are dating or have dated in the past.

Temporary Restraining Order (TRO) - A civil court order issued by a judge to protect the life, health or well-being of a victim. TROs can prohibit domestic violence offenders from having contact with victims, either in person or through any means of communication, including third parties. TROs also can prohibit offenders from a victim's home and workplace. A violation of a TRO may be a criminal offense. A TRO will last approximately 10 business days, or until a court holds a hearing to determine if a Final Restraining Order (FRO) is needed. In New Jersey, there is no expiration of a FRO.

Victim - A person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present household member or was at any time a household member. A victim of domestic violence is also any person, regardless of age, who has been subjected to domestic violence by one of the following actors: a person with whom the victim has a child in common; a person with whom the victim anticipates having a child in common, if one of the parties is pregnant; and a person with whom the victim has had a dating relationship.

Workplace-Related Incidents - Incidents of domestic violence, sexual violence, dating violence, and stalking, including acts, attempted acts, or threatened acts by or against employees, the families of employees, and/or their property, that imperil the safety, well-being, or productivity of any person associated with a public employee in the State of New Jersey, regardless of whether the act occurred in or outside the organization's physical workplace. An employee is considered to be in the workplace while in or using the resources of the employer. This includes, but is not limited to, facilities, work sites, equipment, vehicles, or while on work-related travel.

Persons Covered By This Policy

- All employees are covered under this policy, including full and part-time employees, temporary and seasonal employees, interns, volunteers, and employees at any workplace location.

Designate a Human Resources Officer (HRO)

- The Borough designates the following employees as the Primary HRO and Secondary HRO, to assist employees who are victims of domestic violence.
    - **Primary: Personnel & Payroll Coordinator**
    - **973-543-7152 #15**
    - **Secondary: Borough Administrator**
    - **973-543-7152 #11**
- The designated Primary and Secondary HRO shall receive training on responding to and assisting employees who are domestic violence victims in accordance with this policy.

Department Head and Supervisors Responsibility to Report

- Department Heads and supervisors are often aware of circumstances involving an employee who is experiencing domestic violence.
- Department Heads and supervisors are required to refer any employee who is experiencing domestic violence or who reports witnessing domestic violence to the designated HRO.
- Department Heads and supervisors must maintain confidentiality, to the extent possible, and be sensitive, compassionate, and respectful to the needs of persons who are victims of domestic violence.
- The name and contact information of the designated HRO shall be provided to all employees.

Domestic Violence Reporting Procedures

- Employees who are victims of domestic violence are encouraged to seek immediate assistance from their HRO.
- Employees who have information about or witness an act of domestic violence against an employee, are encouraged to report that information to the designated HRO, unless the employee is required to report the domestic violence pursuant to applicable laws, guidelines, standard operating procedures, internal affairs policies, or New Jersey Attorney General directives and guidelines that impose a duty to report,

in which case the employee must report to the appropriate authority in addition to reporting to the designated HRO.
- Nothing in this policy shall preclude an employee from contacting 911 in emergency situations.
- Indeed, HROs shall remind employees to contact 911 if they feel they are in immediate danger.

Responsibilities of Designated HRO

- Shall immediately respond to an employee upon request and provide a safe and confidential location to allow the employee to discuss the circumstances surrounding the domestic violence incident and the request for assistance.
- Determine whether there is an imminent and emergent need to contact 911 and/or local law enforcement.
- Provide the employee with resource information and a confidential telephone line to make necessary calls for services for emergent intervention and supportive services, when appropriate. The HRO or the employee can contact the appropriate Employee Assistance Program to assist with securing resources and confidential services.
- Refer the employee to the provisions and protections of The New Jersey Security and Financial Empowerment Act, N.J.S.A. 34:11C-1 et seq. (NJ SAFE Act), referenced in this policy.
- If there is a report of sexual assault or abuse, the victim should be offered the services of the Sexual Assault Response Team for Morris County by contacting the local police department or Morris CARES, 973-829-0587.
- Maintain the confidentiality of the employee and all parties involved, to the extent practical and appropriate under the circumstances, pursuant to this policy.
- Upon the employee's consent, the employee may provide the HRO with copies of any TROs, FROs, and/or civil restraint agreements that pertain to restraints in the workplace and ensure that security personnel are aware of the names of individuals who are prohibited from appearing at the work location while the employee who sought the restraining order is present. All copies of TROs and FROs shall be maintained in a separate confidential personnel file.

Confidentiality of Employees Records

- To ensure confidentiality and accuracy of information, this policy requires the HRO to keep all documents and reports of domestic violence in confidential personnel file separate from the employee's other personnel records.
- These records shall be considered personnel records and shall not be government records available for public access under the Open Public Records Act. See N.J.S.A. 47:1A-10.

The New Jersey Security and Financial Empowerment Act (NJ-SAFE)

- The New Jersey Security and Financial Empowerment Act, N.J.S.A. 34:11C-1, et seq. (NJ SAFE Act), is a law that provides employment protection for victims of domestic or sexual violence.
- **Unpaid Leave Victims of Domestic or Sexual Violence**
    - The NJ SAFE Act allows a maximum of 20 days of unpaid leave in one 12-month period, to be used within 12 months following any act of domestic or sexual violence.
    - To be eligible, the employee must have worked at least 1,000 hours during the 12-month period immediately before the act of domestic or sexual violence.
    - Further, the employee must have worked for an employer in the State that employs 25 or more employees for each working day during 20 or more calendar weeks in the current or immediately preceding calendar year.
    - This leave can be taken intermittently in days, but not hours.
    - Leave under the NJ SAFE Act may be taken by an employee who is a victim of domestic violence,

as that term is defined in N.J.S.A. 2C:25-19 and N.J.S.A. 30:4-27.6, respectively.

- Leave may also be taken by an employee whose child, parent, spouse, domestic partner, civil union partner, or other relationships as defined in applicable statutes is a victim of domestic or sexual violence.
- Leave under the NJ SAFE Act may be taken for the purpose of engaging in any of the following activities, for themselves, or a child, parent, spouse, domestic partner, or civil union partner, as they relate to an incident of domestic or sexual violence:
    1) Seeking medical attention.
    2) Obtaining services from a victim services organization.
    3) Obtaining psychological or other counseling.
    4) Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase safety.
    5) Seeking legal assistance or remedies to ensure the health and safety of the victim.
    6) Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence.

Public Employer Domestic Violence Action Plan

- The Borough has developed the following action plan to identify, respond to, and correct employee performance issues that are caused by domestic violence, pursuant to N.J.S.A. 11A:2-6a, and in accordance with the following guidelines:
    1) Designated an HRO with responsibilities pursuant to this policy.
    2) Recognize that an employee may need an accommodation as the employee may experience temporary difficulty fulfilling job responsibilities.
    3) Provide reasonable accommodations to ensure the employee's safety which may include, but are not limited to, the following:
        - Implementation of safety measures.
        - Transfer or reassignment.
        - Modified work schedule.
        - Change in work telephone number or workstation location.
        - Assistance in documenting violence occurring in the workplace.
        - An implemented safety procedure.
        - Other accommodation approved by the employer.
    4) Advise the employee of information concerning the NJ SAFE Act; Family and Medical Leave Act (FMLA); or Family Leave Act (FLA); Temporary Disability Insurance (TOI); or Americans with Disabilities Act (ADA); or other reasonable flexible leave options when an employee, or their child, parent, spouse, domestic partner, civil union partner, or other relationships as defined in applicable statutes is a victim of domestic violence.
    5) Commit to adherence to the provisions of the NJ SAFE Act, including that the employer will not retaliate against, terminate, or discipline any employee for reporting information about incidents of domestic violence, as defined in this policy, if the victim provides notice to their Human Resources Office of the status or if the Human Resources Office has reason to believe an employee is a victim of domestic violence.
    6) Advise any employee who believes they have been subjected to adverse action because of making a report pursuant to this policy, of the civil right of action under the NJ SAFE ACT. Advise the employee to contact their designated Labor Relations Officer,

Conscientious Employees Protection Act (CEPA) Officer and/or Equal Employment Opportunity Officer in the event they believe the adverse action is a violation of their collective bargaining agreement, the Conscientious Employees Protection Act or the New Jersey Law Against Discrimination and corresponding policies.

7) The Borough Administration, designated HRO, and employees should familiarize themselves with this policy.
8) This policy shall be provided to all employees and to all new employees upon hiring.
9) Information and resources about domestic violence are encouraged to be placed in visible areas, such as restrooms, cafeterias, breakrooms, and where other resource information is located.

Other Applicable Requirements

- In addition to this policy, the HRO and the public employer's appointing authority must follow all applicable laws, guidelines, standard operating procedures, internal affairs policies, and New Jersey Attorney General Directives and guidelines that impose a duty to report.
- Additionally, to the extent that the procedures set forth in this policy conflict with collective negotiated agreements or with the Family Educational Rights and Privacy Act (FERPA), the provisions of the negotiated agreements and the provisions of FERPA control.

Policy Modification, Review & Enforceability

- A public employer may seek to modify this policy, to create additional protocols to protect victims of domestic violence but may not modify in a way that reduces or compromises the safeguards and processes set out in this policy.
- These provisions do not create any promises or rights that may be enforced by any person or entities.

Section 4.
Personnel Rules and Regulations
PROTECTION AND SAFE TREATMENT OF MINORS POLICY

I. Purpose and Scope

Under New Jersey law (N.J.S.A. 6-8.21), an abused or neglected child is anyone "under the age of 18 who is caused harm by a parent, guardian or other person having custody or control of that minor." A child who is under the age of eighteen (18) is considered to be abused or neglected when a parent, caregiver, another child or another adult does one of more of the following:

1. Inflicts or allows to be inflicted physical injury by other than accidental means that creates substantial harm or risk of substantial harm, and/or
2. Fails to provide proper supervision or adequate food, clothing, shelter, education, or medical care although financially able or assisted to do so, and/or
3. Commits or allows to be committed an act of sexual abuse against a child.

Child abuse can have long-term effects on victims. A lack of trust and difficulty with healthy relationships is common, as is a core feeling of worthlessness and low self-esteem. There may even be long-term trouble with regulating emotions that can lead to destructive behaviors.

There are typically four common types of abuse:

- The failure to meet a child's basic needs, physically or emotionally, is called ***neglect***.
- The intentional use of physical force that results in injury, which is called ***physical abuse***.
- The practice of any behaviors that harm a child's feelings of self-worth or emotional well-being, which is ***emotional abuse***.
- Engaging in sexual acts with a child including pornography, which is ***sexual abuse***.

Unfortunately, statistics reflect that abuse is all too common in any form.

- In New Jersey, abuse reports involving 80,000 children are filed each year. 50,000 of those children receive prevention and post-response services.
- 75% of the cases involve neglect, 18% of the cases involve physical abuse, and psychological abuse accounts for 7% of the cases.
- 55% of the perpetrators are female, while males account for 45%.
- Sadly, child abuse is a vicious cycle, in that 30% of abused children will later abuse their own children.

The statistics and characteristics pertaining to sexual abuse are sobering and equally as disheartening:

- **"Peer-to-Peer"** abuse is by far the most common, where one or more children or adolescent(s) sexually abuses or inappropriately touches another. Legally, the abuser must be at least 4 years older to trigger the statute. The American Psychological Association reports this type of abuse is driven by power and dominance, the same factors that drive bullying within this age group. In fact, bullying can be a precursor to sexual abuse, especially when there is a lack of supervision.
- **"Adult-to-Child"** abuse in contract is typically thought out and planned in advance, demanding access and privacy and control. These three factors demand a specific type of relationship and setting, meaning that 90% of juvenile sexual abuse victims know their abuser. The scope of the

problem is massive: by the age of 18, 1 in 4 girls and 1 in 6 boys have experienced sexual abuse. From those figures, 88% of those molestations are attributed to individuals with pedophilia. ***Pedophilia is a psychotic disorder in which an adult or adolescent demonstrates a primary sexual attraction to prepubescent children.*** It is important, however, not to confuse pedophilia with actual child molestation, as many pedophiles never act on their attractions.

- **Child sexual abusers are not always easy to spot**. Though 7 out of every 8 molesters are male, they match the general population in ethnicity, religion, education, and marital status. So, there is no stereotype, especially since abusers go to great lengths to blend in. However, only 10% of them abuse children that they don't know, and 68% look no further than their own families for victims.
- **40% of abusers** first begin molesting children before they themselves reach the age of 15, and the vast majority before the age of 20.
- **Adolescent abusers** generally begin their acts of abuse on younger siblings.
- **Most sexual abuse occurs within the family.** However, molesters can gain access to children outside of their own families through employment or volunteer work with an organization that works primarily with children. This allows them both time alone with potential victims and the ability to build trust and credibility. In fact, child abusers are often known and respected in their communities for dedication to children.
- **In terms of a victim profile**, it is important to remember that, although there are characteristics that make some children more vulnerable, every child is in danger. Passive, lonely, or troubled children, especially those who live with stepparents or single parents may be targeted. Children between the ages of 7 and 13 years old are most at risk, and children from low socioeconomic backgrounds or rural areas are more likely to be victimized.
- **Molesters have behavioral patterns that can be identified as *"grooming"* their victims**. Sexual abuse is rarely violent. The molester's goal is to solicit compliance by beginning to win the victim's trust. There might be pet names, gifts to foster exclusivity and encouragement to "keep secrets." The molester might begin to spend time with the victim outside of the regular program or schedule, contacting parents to become involved in a child's life in some capacity, like babysitting. For this reason, many parents are shocked after abuse comes to light simply because the abuser seemed trustworthy. Inevitably, the favoritism is not enough to keep the victim silent anymore, and the abuser resorts to threats—threats that play off of a child's guilt over the sexual contact.
- **During the grooming process and abuse, victims often begin to show signs** such as sexual behaviors or strong sexual language that is too adult for their age. Many children feel at fault after the abuse and begin to suffer guilt and depression, even resorting to self-harm. They may begin to display cuts and scratches or other self-inflicted injuries. However, some children are naïve and unaware of the gravity of the abusive nature of their experience. Research shows that children often delay reporting sexual abuse. They should not be disbelieved just because they waited a long time to seek help.

<u>In the State of New Jersey every level of government has a role in protecting minors.</u>

- **At the State level:**
  - State law is enforced through the NJ Family Division of the State court system. The court has broad powers including the ability to remove children from dangerous situations.
    - The Department of Children and Families, specifically the Division of Child Protection and Permanency, combines all state operations intended to safeguard children into a single, coordinated program working closely with the Courts, legal advocates, and law enforcement.

        - The Department of Corrections operates adult prisons and youth correctional centers to deal with perpetrators, while individual counties operate youth detention centers and special purpose schools.
- **At the local level:**
    - Educational professionals have the most contact with children, meaning they are often the first to detect issues.
    - Housing Authority employees may also frequently come into contact with children.
    - Municipalities and counties operate or sponsor a variety of programs that involve children including but not limited to:
        - Recreation programs
        - Before and After Care programs
        - Youth sports leagues
        - Youth centers
        - Youth in Government programs
        - Junior law enforcement training programs
    - The role of **Police and law enforcement agencies** is especially important. Police officers assist in resolving reported situations, often acting as first identifiers. In New Jersey, police are given broad authority to protect children, including the authority to remove them from their parents or caregivers without a court order if necessary to prevent imminent danger to a child. Under the **Prevention of Domestic Violence Act**, a law enforcement officer must make an arrest when the officer finds "probable cause" that domestic violence has occurred. This holds even if the victim refuses to make a complaint. The Act is invoked in situations where the victim exhibits signs of injury caused by domestic violence, when a warrant is in effect, or when there is probable cause to believe that a weapon has been involved in an act of domestic violence. Abusers often use psychological tactics or coercive control over their partners, such as making threats to prevent a victim from leaving or contacting friends, family, or police. But even if these conditions are not met, an officer may still make an arrest or sign a criminal complaint if there is probable cause to believe acts of domestic violence have been committed. Now if there is no visible sign of injury but the victim states that an injury did, in fact, occur, the officer must take other factors into consideration in determining probable cause.
    - The Borough is committed to the safety of all individuals in its community; however, the Borough has particular concern for those who are potentially vulnerable, including minor children. The Borough regards the abuse of children as abhorrent in all its forms and pledges to hold its officials, employees, and volunteers to the highest standards of conduct in interacting with children. Statistics show that 93% of victims under the age of 18 know the abuser. Further, a perpetrator does not have to be an adult to harm a child but is typically in a caregiver role. They can have any relationship to the child including a playmate, family member, a teacher, a coach, or instructor.
    - The Borough is fully committed to protecting the health, safety and welfare of minors who interact with officials, employees, and volunteers of the Borough to the maximum extent possible. These Policy and Procedures establish the guidelines for officials, employees, and volunteers who set policy for the Borough or may work with or interact with individuals under 18 years of age, and those who supervise employees, and volunteers who may work with or interact with individuals under 18 years of age, with the goal of promoting the safety and wellbeing of minors.

- This Policy provides guidelines that apply broadly to interactions between minors and officials, employees, and volunteers in programs operated by the Borough or affiliated programs or activities. All officials, employees, and volunteers are responsible for understanding and complying with this policy.

II. Definitions

Authorized Adult - Individuals, age 18 and older, paid, or unpaid, who interact with, supervise, chaperone, or otherwise oversee and/or interact with minors in program activities, recreational, and/or residential facilities. The Authorized Adults' roles may include positions as counselors, chaperones, coaches, instructors, etc.
Child or Minor - A person under the age of eighteen (18).
Department Heads - Appointed department heads of the Borough, including the chief administrative officer, and any assistants.
Direct Contact - Positions with the possibility of care, supervision, guidance or control of children or routine interaction with children.
Dual Reporting – Reporting possible abuse to both the NJ Department of Children and Families and law enforcement at the same time by the individual designated by the Borough to report all possible cases of abuse.
Employees, Staff, or Counselors – persons working for the Borough on a full-time or part-time basis and compensated by the Borough.
Facilities - Facilities owned by, under the control of, or rented or leased to the Borough.
Grooming - is when someone builds a relationship, trust and emotional connection with a child or young person so they can manipulate, exploit and abuse them. Refer to Appendix B for more detailed information on grooming.
NJMEL JIF - New Jersey Municipal Excess Liability Fund Joint Insurance fund.
Officials – Elected officials of the Borough, appointed Board members, and Authority Commissioners.
One-On-One Contact - Personal, unsupervised interaction between any Authorized Adult and a participant without at least one other Authorized Adult, parent or legal guardian being present.
Programs - Programs and activities offered or sponsored by the Borough.
Volunteers - Individuals volunteering their time to provide services to the Borough who are not on the payroll and receive no compensation.

III. Policy

- The Borough is charged with protecting the health, safety, and welfare of all its citizens, including children under the age of 18. To that end, the Borough is firmly committed to protecting children under the care and supervision of the Borough from all forms of physical, mental, sexual and emotional abuse. The Borough is committed to establishing and implementing safeguards to eliminate opportunities for abuse of children entrusted to the care of the Borough. The procedures outlined below shall apply to all officials, employees, and volunteers of the Borough.

IV. Recruitment and Hiring of Employees and Vetting of Individuals Volunteering Their Time:

- All prospective employees and volunteers shall undergo a thorough and complete background check, including the following:
    1. For part-time summer employees who shall be interacting with minors, including but not limited to lifeguards, camp counselors, coaches, and instructors:
        a. National Database Criminal History Search

b. National Sex Offender Search
c. Social Security Trace/Validation

2. For full-time employees in supervisory positions involving minors:
   a. National Database Criminal History Search
   b. National Sex Offender Search
   c. Social Security Trace/Validation
   d. Education Verification
   e. Employment Verification
   f. Credit Check
   g. Motor Vehicle Record
   h. Reference Check

Many local governments hire minor children to work in their summer or seasonal programs. It may be difficult to obtain any background information for minors. It is recommended that the local government attempt to verify any past employment for minors between 16 and 18 years of age, with the consent of the parents or guardians.

Recognizing that fingerprint identification checks may not yield results in time for hiring purposes, the NJMEL assembled a list of qualified vendors for background checks through an RFQ process, and the five vendors on the list along with their contact information can be found at the following link on the NJMEL website.

https://njmel.org/wp-content/uploads/2021/05/RFQ-Results-21-02-background-Check-Services.pdf

V. Written documentation of the background check shall be maintained by the Borough in perpetuity.

ii. Background checks that disclose any negative or questionable results must be reviewed and approved by the Borough prior to the individual being hired and/or working with minors. Provisional hiring should not be permitted.

iii. All prospective employees and volunteers must complete the training adopted by the Borough PRIOR TO starting employment or volunteer service. In addition to completing the training course adopted by the Borough, it is highly recommended that all volunteer coaches complete the Rutgers SAFETY Clinic course (Sports Awareness for Educating Today's Youth ™), which is a three-hour program that meets the "Minimum Standards for Volunteer Coaches Safety Orientation and Training Skills Programs" under (N.J.A.C. 5:52) and provides partial civil immunity protection to volunteer coaches under the "Little League Law" (2A:62A-6 et. seq.) The current Rutgers Safety Clinic Course includes a module on the sexual abuse of minors. If coaches completed the Rutgers course more than five years ago and it did not have any training on the sexual abuse of minors, it is highly recommended that the coaches be required to watch the video on the MEL website. Documentation verifying that the coaches watched and understood their responsibilities must be kept confirming that the training was completed.

iv. The Borough shall periodically re-check and document the Megan's Law directory for New Jersey to make certain that current employees are not listed.

v. Once employed, authorized Adults who are employed are required to notify the appropriate Human Resources representative of an arrest (charged with a misdemeanor or felony) or conviction for an

offense within 72 hours of knowledge of the arrest or conviction in order to ascertain the fitness of those employees and volunteers to interact with children.

VI. Procedures and Responsibilities of Officials

- Under New Jersey Law, an official may be held liable for the abuse or neglect of a child if they fail to implement appropriate safeguards to protect the child while the minor has been entrusted to the care of the Borough. Most importantly, recent changes in the law in New Jersey extended the statute of limitations for child abuse and neglect cases substantially, thus placing local officials and employees at a far greater risk.
- A valid cause of action can be filed by an alleged victim well after the official has left the office. It is, therefore, critically important for officials to establish and monitor policies and procedures designed to safeguard minors entrusted to the care of the Borough.

Officials of the Borough are required to:

- Complete the initial training course adopted by the Borough, and any updated/refresher course, to better understand their legal duties and responsibilities under Federal and N.J. State Law. The training program will include the following concepts:

VII. Program Procedures

All Borough programs operated by, sponsored by, or affiliated with the Borough shall comply with the following procedures. All officials, employees, and volunteers who interact with or could possibly interact with minors, and those employees who supervise employees who interact with or could possibly interact with minors, shall adhere to the following policy.

The following policies shall apply to all programs offered by, sponsored by, or affiliated with the Borough. As an essential element of compliance with the overall objective of protecting and addressing the safe treatment of minors, the Borough shall:

a. Establish a written procedure for the notification of the minor's parent/legal guardian in case of an emergency, including medical or behavioral problem, natural disasters, or other significant program disruptions. Authorized Adults with the program, as well as participants and their parents/legal guardians, must be advised of this procedure in writing prior to the participation of the minors in the program. In addition, the Borough shall provide information to parents or legal guardians detailing the way the participant can be contacted during the program.
b. Make certain that all program participants provide a Medical Treatment Authorization form annually to the Borough.
c. Implement and adopt a "Code of Conduct" for volunteer and paid staff members which, at a minimum, will include the following:

Code of Conduct

- Staff members will always respect the rights of program participants and use positive techniques of guidance including positive reinforcement and encouragement.
- Staff members will portray a positive role model for youth by maintaining an attitude of respect, loyalty, patience, courtesy, tact, and maturity.
- Staff members shall not transport children in their own vehicles unless written authorization from the child's parent or guardian has been received.
- Members of the staff shall not be alone with children they meet in the programs outside of the camp. This includes babysitting, sleepovers, and inviting children to their home.
- Staff members shall always be visible to other staff members while supervising minors. Any exceptions require a written explanation before the fact and approval of the Program Director.
- Staff members will appear neat, clean, and appropriately attired.
- Staff members will refrain from intimate displays of affection towards others in the presence of children, parents, and staff.
- Staff members are required to refrain from texting, and posting or checking any of the social media outlets while they are working or volunteering. The only exception is for texting for the purposes of communicating with another staff member or parent regarding a programmatic issue pertaining to a child.
- Staff members are prohibited from buying gifts for program participants.

In addition to the Code of Conduct, the following shall be a part of the specific program provisions:

- The possession or use of alcohol and other drugs, fireworks, guns and other weapons is prohibited.
- The Borough shall set forth rules and procedures governing when and under what circumstances participants may leave the Borough property during the program.
- No violence, including sexual abuse or harassment, shall be tolerated.
- Hazing of any kind is prohibited. Bullying including verbal, physical, and cyber bullying are prohibited and shall be addressed immediately.
- No theft of property shall be tolerated.
- No use of tobacco products shall be tolerated.
- Misuse or damage of Borough property is prohibited. Charges shall be assessed against those participants who are responsible for damage or misuse of property.
- The inappropriate use of cameras, imaging, and digital devices is prohibited including use of such devices in showers, restrooms, or other areas where privacy is expected by participants.
    - Under no circumstances are any images of any child taken during any of the activities conducted or sponsored by the Borough to be shared on any social media platform without the expressed written consent of a parent or legal guardian.
    - If possible, the Borough shall assign a staff member who is at least 21 years of age to be accessible to participants. Additional Authorized Adults shall be assigned to ensure one-on-one contact with minors does not occur and that appropriate levels of supervision are implemented.
    - Take appropriate steps to make certain that children are not released to anyone other than the authorized parent, guardian, or other adult authorized by the parent or guardian (written authorization on file in advance.)
    - Develop and make available to participants and their parents or guardians, the rules and discipline measures applicable to the program. Program participants and staff must abide by all regulations and may be removed from the program for non-compliance with rules.

- The recommended ratio of counselors to program participants should reflect the gender distribution of the participants, and should meet the following:
    1. One staff member for every six participants ages 4 and 5
    2. One staff member for every eight participants ages 6 to 8
    3. One staff member for every ten participants ages 9 to 14
    4. One staff member for every twelve participants ages 15 to 17
- The responsibilities of the counselors must include, at a minimum, informing program participants about safety and security procedures, rules established by the program, and behavioral expectations. Counselors are responsible for following and enforcing all rules and must be able to provide information included herein to program participants and be able to respond to emergencies.

Specific Policy and Procedures for Use of Restrooms by Children/Minors:

- All restrooms shall be checked in advance by staff persons before minor children enter to make certain that no other individuals are present.
- Staff members (of the same sex) are to stand guard at the doorway to make certain that no one else enters the restroom while a child is there. Children should not be permitted to enter restrooms in pairs or in groups, unless it is absolutely necessary.
- For field trips, staff members must monitor bathroom use by minor children and shall not permit a child to enter a restroom alone.

VIII. Procedures for Law Enforcement Officers:

- Law enforcement officers of the Borough frequently interact with minors in a variety of ways. In addition to the guidance provided by the Attorney General's office, it is important to establish guidelines to assist law enforcement officers in being aware of how to act and react in these circumstances.
- To that end, the Chief of Police or their designee of the Borough shall formulate a written policy addressing the safe treatment of minors for consideration and approval by the governing body for law enforcement officers who interact with minors.
- **The policy shall, at a minimum, incorporate and address the following:**
    a. **Transporting minors in a police vehicle.** Whenever possible, victims or alleged victims of sexual assault or other crimes, or minors removed from a situation for protective purposes, shall be transported by two officers (at least one of whom shall be of the same sex as the victim) in unmarked vehicles that does not have a prisoner compartment/partition. Officers transporting a minor for whatever reason shall document starting and stopping mileage through radio contact.
    b. **Directives issued by the NJ State Attorney General** pertaining to interaction with minors shall be incorporated into the policy.
    c. The following provisions from the "Code of Conduct" for counselors shall be included in the policy for officers assigned to work in school settings (i.e. Class 3 officers):
        i. Officers will, at all times, respect the rights of students and use positive techniques of guidance including positive reinforcement and encouragement.
        ii. Officers will portray a positive role model for youth by maintaining an attitude of respect, loyalty, patience, courtesy, tact, and maturity.
        iii. Officers shall not transport children in their own vehicles. Officers shall not arrange to see students outside of school and this includes babysitting, sleepovers, and inviting children to their home. Any exceptions require a written explanation before the fact and approval of the Chief

iv. Officers shall make certain that they are neat, clean, and appropriately attired.
v. Officers will refrain from intimate displays of affection towards others in the presence of children, parents, and staff. Officers shall not buy gifts for students at any time.
vi. All officers are required to complete the initial training course offered by the NJMEL JIF, and any refresher courses as well.

IX. Training Requirements:

Individual training courses have been designed for each of the following categories and **all** officials, employees, and volunteers of the Borough are required to complete training (and refresher course training) adopted by the Borough. ALL employees of the Borough shall complete the training course whether they interact with children/minors or not. Although training records shall be maintained, it is recommended that each Borough and individual trainees also keep copies of their own training records.

a. **Elected Officials, Appointed Officials, Department Heads, and Supervisors:**
All elected officials, appointed officials, department heads, and supervisors shall complete the initial virtual training course offered by the NJMEL, ***"PROTECTING CHILDREN FROM ABUSE***" and adopted by the Employer, and any updated/refresher course in order to better understand their legal duties and responsibilities under Federal and N.J. State Law. The course includes the following:
- Recognizing the signs of abuse and neglect of minors.
- Establishing guidelines for protecting minors from emotional and physical abuse and neglect.
- Understanding and being prepared to implement the procedures necessary to eliminate opportunities for abuse.
- Becoming familiar with the legal requirements to report suspected cases of abuse.
- Fully understanding the legal consequences for not being diligent in making certain that employees of the Employer adhere to all policies and procedures as adopted.

b. **Volunteers and Employees of the Employer**
- All employees and volunteers (regardless of whether they shall be working with children or not) shall complete training provided by the NMEL in the form of the "PROTECTING CHILDREN" video on protecting children on the MEL website and found at:

https://njmel.org/mel-safety-institute/model-policies/protecting-children-videos/

i. Course Content shall include:
1. Current State NJ State Law pertaining to Sexual Abuse of Minors
2. Recognizing the signs of abuse and neglect
3. Different types of abuse (i.e., Peer to Peer, Adult to Child, etc…)
4. Your legal responsibility for implementing and monitoring procedures and employees
5. Reporting cases of abuse

c. **Law Enforcement Officers**
i. Course Content shall include:
1. Current Status of N.J. Law and Directives from the Attorney General for Law Enforcement personnel.
2. Your responsibilities
3. Officers in Schools
4. Reporting Abuse

X. Reporting Suspected Child Abuse/Neglect:

In light of the importance and priority placed on safeguarding the health and safety of minors, it is critically important that suspected cases of child abuse and neglect are reported as soon as possible. As a government official, employee or volunteer, you are legally required to report suspected child abuse. This requirement includes all governmental officials, employees, and volunteers.

The following procedures shall be utilized in reporting suspected cases of abuse. The Borough shall also train officials, department heads, employees, and volunteers in the concept of "dual reporting," which involves reporting the suspected abuse to local law enforcement in addition to reporting the abuse to the Department of Children and Families. Reporting suspected abuse to local law enforcement is critically important in cases where there is the potential for violence.

Child Abuse is a hard thing to talk about, especially with victims. The most important thing to remember is to show calm reassurance and unconditional support. Avoid interrogation and leading questions. Understand that denial and embarrassment are common reactions. Don't display disbelief, shock, or disgust. Instead, be reassuring. Make sure the child knows that they did nothing wrong. Reassure them that this is not their fault and make sure they know that you take it seriously.

Interviewing children to investigate sexual abuse requires highly technical expertise. Do not "investigate" an abuse situation. Do not interrogate the child. The investigation shall be undertaken by those who are trained to undertake that critical task. Instead report it immediately, as shown below. And finally, keeping safety as the priority. If there is the possibility of violence against yourself or the child, get the appropriate professionals or agencies involved as soon as possible, and report the abuse to local law enforcement.

It is highly recommended that, whenever possible, officials, employees, and volunteers report the suspected abuse to both the N.J. Department of Children and Families and law enforcement at the same time, which is known as "dual reporting."

For ALL elected officials, appointed officials, supervisors, department heads, full or part-time employees or volunteers of programs conducted by the Borough:

- Report on the suspected abuse to the New Jersey Department of Children and Families. Please be prepared to include the following information to the extent the information has been told to you.
  a. **Who**: The child and parent/caregiver's name, age, and address and the name of the alleged perpetrator and that person's relationship to the child.
  b. **What:** Type and frequency of alleged abuse/neglect, current or previous injuries to the child, and what caused you to become concerned.
  c. **When:** When the alleged abuse/neglect occurred and when you learned of it.
  d. **Where:** Where the incident occurred, where the child is now, and whether the alleged perpetrator has access to the child.
  e. **How:** How urgent the need is for intervention and whether there is a likelihood of imminent danger for the child.
- Call the Hotline established by the N.J. Department of Children and Families @ 1-877-652-2873. It is not the supervisor's role to decide whether a case should be reported. All cases shall be reported

- ***<u>For Law Enforcement Officers</u>***:
  - Immediately report any suspected or alleged cases of abuse or neglect to the New Jersey Department of Children and Families and to the County Prosecutor.

XI. <u>Important Information Regarding Reporting Suspected Abuse Under NJ Law:</u>

The following guidelines have been established under New Jersey law, for those reporting suspected or alleged cases of abuse or neglect. The Borough encourages all officials, employees, and volunteers in programs operated by the Borough or affiliated programs or activities to report suspected cases of abuse with the following in mind.

i. *Any person who, in good faith, makes a report of child abuse or neglect or testifies in a child abuse hearing resulting from such a report is immune from any criminal or civil liability as a result of such action. Calls can be placed to the hotline anonymously.*
ii. *However, any person who knowingly fails to report suspected abuse or neglect according to the law or to comply with the provisions of the law is a disorderly person.*
iii. *When a report indicates that a child may be at risk, an investigator from the Division of Child Protection and Permanency (formerly Youth and Family Services) will promptly investigate the allegations of child abuse and neglect within 24 hours of receipt of the report.*

XII. <u>Acknowledgement of Receipt and Review of Policy:</u>

All officials, employees/counselors, and volunteers shall sign and date an acknowledgement form that confirms they have received and reviewed the Policy Addressing the Protection and Safe Treatment of Minors, issued to them by the Borough. The same process shall be used for any revised policy issued in the future.

Indicators of Child Abuse/Neglect

The New Jersey Department of Children and Families issued the following guidelines to assist in recognizing the indicators of child abuse/neglect.

Indicators of Child Abuse/Neglect

- Different types of abuse and neglect have different physical and behavioral indicators.

Physical Abuse

Physical Indicators	Behavioral Indicators
Unexplained bruises and welts: • On face, lips, mouth • On torso, back, buttocks, thighs • In various stages of healing • Cluster, forming regular patterns • Reflecting shape of article used to inflict (electric cord, belt buckle) • On several different surface areas • Regularly appear after absence, weekend, or vacation Unexplained burns: • Cigar, cigarette burns, especially on soles, palms, back or buttocks • Immersion burns (sock-like, glove-like doughnut shaped on buttocks or genitalia) • Patterned like electric burner, iron, etc. • Rope burns on arms, legs, neck or torso Unexplained fractures: • To skull, nose, facial structure • In various stages of healing • Multiple or spiral fractures Unexplained laceration or abrasions: • To mouth, lips, gums, eyes • To external genitalia	Wary of adult contacts Apprehensive when other children cry Behavioral extremes: • Aggressiveness • Withdrawal Frightened of parents Afraid to go home Reports injury by parents

Physical Neglect

Physical Indicators	Behavioral Indicators
Consistent hunger, poor hygiene, inappropriate dress Consistent lack of supervision, especially in dangerous activities or long periods Constant fatigue or listlessness Unattended physical problems or medical needs Abandonment	Begging, stealing food Extended stays at school (early arrival and late departure) Constantly falling asleep in class Alcohol or drug abuse Delinquency (e.g. thefts) States there is no caregiver

Sexual Abuse

Physical Indicators	Behavioral Indicators
Difficulty in walking or sitting Torn, stained or bloody underclothing Pain or itching in genital area Bruises or bleeding in external genitalia, vaginal or anal areas Venereal disease, especially in pre-teens Pregnancy	Unwilling to change for gym or participate in PE Withdrawn, fantasy or infantile behavior Bizarre, sophisticated or unusual sexual behavior or knowledge Poor peer relationships Delinquent or run away Reports sexual assault by caregiver

Emotional Maltreatment

Physical Indicators	Behavioral Indicators
Habit disorders (sucking, biting, rocking, etc.) Conduct disorders (antisocial, destructive, etc.) Neurotic traits (sleep disorders, speech disorders, inhibition of play)	Behavior extremes: • Compliant, passive • Aggressive, demanding Overly adoptive behavior: • Inappropriately adult • Inappropriately infant

Grooming Behavior

- Grooming is when someone builds a relationship, trust and emotional connection with a child or young person so they can manipulate, exploit, and abuse them.
- **Some common characteristics of someone attempting to "groom" a child.**
  - Molesters often refer to their intended victims by pet names and use gifts to foster exclusivity and build a relationship while starting the practice of keeping secrets.
  - The molester might begin to spend time with the victim outside of the regular program or schedule, contacting parents to become involved in a child's life in some capacity, like babysitting. For this reason, many parents are shocked after abuse comes to light simply because the abuser seemed so good – too good to be true, in fact.
  - Inevitably, the favoritism is not enough to keep the victim, and the abuser resorts to threats—threats that play off of a child's guilt over the sexual contact.
  - During the grooming process and abuse itself, victims often begin to show tell-tale signs including:
    - Sexual behaviors or strong sexual language that is too adult for their age.
    - Many children feel at fault after the abuse and begin to suffer guilt and depression, even resorting to self-harm.
    - Also look for cuts and scratches or other self-inflicted injuries.

Position Requiring CDL License Exclusion

- All applicants for positions that require a CDL license and all employees whose job requires them to possess a CDL license shall be excluded from this Alcohol and Drug-Free Workplace policy.
- Instead, these employees are governed by Federal and State regulations, as well as the attached CDL Drug and Alcohol Testing Policy (Appendix A).
- Employees hired with the understanding that they must obtain a CDL license shall be covered under this Alcohol and Drug-Free Workplace Policy until they obtain their CDL license.

BOROUGH EMPLOYEES' ROLE AND RESPONSIBILITIES

Borough and New Jersey Drug-Free Workplace Policy

- The Borough has developed its drug-free workplace policy in compliance with New Jersey Laws, and the Fourth Amendment to the United States Constitution as it covers employees of governmental entities.
- The objective of this policy is to maintain a working environment free from the adverse effects of substance abuse.
- The Borough recognizes the prime importance to the Borough of protecting the safety, health and welfare of its employees and others with whom it interfaces with, such as citizens, contractors, and members of the public and this policy is considered a Health & Safety Policy of the Borough.
- The Borough is committed to maintaining a safe, pleasant, and productive working environment.
- Employees have the right to come to work without fear of interacting with someone under the influence of alcohol or drugs.
- The Borough Drug-Free Workplace Policy does not tolerate the abuse of drugs or alcohol in the workplace. Understand that this Policy prohibits illegal drug use on or off the job.
- The Borough has a duty to safeguard its employees and the public from the risk of harm from employees who work under the influence of alcohol and drugs.
- While the Borough has no intention of intruding into the private lives of its employees, the Borough expects employees to report to work unimpaired and able to perform the duties of their job safely and effectively.
- In addition to absenteeism and accidents, substance abuse can adversely affect performance, productivity, and workplace morale.
- Co-workers may feel that they must cover up or work harder because of someone's substance abuse.
- All Borough employees and contractors and their employees are responsible and accountable for ensuring that they are not under the influence of alcohol or drugs when conducting work for the Borough.
- Supervisors are responsible for taking appropriate action where they identify individuals who are at work while under the influence of alcohol or drugs. They should also take appropriate action to protect the health and safety of individuals who may be affected.
- Employees who are working under the influence, and employees who know that a fellow employee is working under the influence, shall take proper action. The failure to take proper action and the right steps to prevent this risk can result in legal liability.
- An employee with an alcohol or drugs problem may lose their job and/or suffer devastating effects on their health.

- Compliance with this policy is a condition of hiring or continued employment, except to the extent this policy may conflict with a current collective bargaining agreement (CBA), the CBA shall prevail. To the extent this Policy supplements, and does not conflict with current collective bargaining agreements, it is applicable.
- The Borough's Designated Employer Representative (DER) is the Personnel & Payroll Coordinator.
- The Alternative DER is the Borough Administrator.

Employee Assistance Program (EAP)

- The borough encourages any employee suffering from a substance abuse problem to seek help.
- If you need help, the DER can direct you to the Borough Employee Assistance Program (EAP) and Substance Abuse Professional (SAP) for a confidential evaluation and referral for substance abuse treatment if necessary.
- EAP can help improve an employee's health and help employees avoid trouble with the law.
- Even if you do not use drugs or alcohol, this program will make your workplace safer and more productive, the Borough safer, and will help your friends and co-workers get the help they need.

Safety-Sensitive Classified Employees

- Safety-Sensitive Classified Employees are those employees who discharge duties fraught with risks of injury to others that even a momentary lapse of concentration can have disastrous consequences.
- Factors which have been considered in determining whether a position is safety sensitive include handling of potentially dangerous machinery, sharp objects, working at heights, positions requiring a high level of cognitive function, mostly unsupervised responsibility for children, and handling of hazardous substances in an environment where others could be injured.
- Positions which have been found to be safety-sensitive include firefighters, emergency medical technicians, law enforcement officials who carry firearms, fire, and police dispatchers, 911 operators, heavy machinery operators, forklift operators, bus drivers, some (but not all) transportation workers, pipeline operators, gas meter repairmen, jail officers, and those involved in security functions.
- All CDL licensed employees are determined to be safety-sensitive classified employees.
- Unless an employee comes under drug testing regulations of some federal agency, each position, job classification or department, should be individually evaluated to determine whether the employee is in the safety-sensitive classification in accordance with the above guidelines.

DRUG AND ALCOHOL TESTING

Drug & Alcohol Testing Records

- All testing information is considered confidential information by the Borough and shall be maintained in a separate file along with the employee's medical records, separate from other personnel files.
- An employee has the right to inspect and obtain a copy of their drug test results.
- Drug testing information will only be released to those employees of the Borough with a job related need to know, the DER and Alternate DER, to defend against any administrative action brought by the employee against the Borough, in grievance or arbitration proceeding under the terms of a collective bargaining agreement, in a court of law under subpoena, as released by the employee in writing, the MRO, Borough insurers, rehabilitation programs and as otherwise required by law.
- Notice of the Borough's New Jersey Drug-Free Workplace testing shall be provided on job announcement and is posted in conspicuous locations on Borough premises.

Who Does the Borough Test?

- All employees performing safety-sensitive functions, and all final applicants for positions where safety-sensitive functions are performed, and all other employees where reasonable suspicion exists.
- Elected officials who are not otherwise classified as employees are not subject to testing under this Policy.

How Does the Borough Test?

- Drug and alcohol testing is done through chemical analysis which determines without question if a person has drugs or alcohol in their system and in conformity with regulations of the New York Department of Health, New Jersey Department of Health, or CLIA.
- Specimens subject to testing include urine, breath, hair, oral fluids, or blood. Specimen collections, chain of custody and drug and alcohol tests shall be in substantial compliance with the U.S. Department of Transportation (DOT) procedures if applicable to the type of specimen being tested.
- To ensure accuracy, urine lab test procedures shall include a preliminary drug screening, two highly sophisticated scientific tests including adulterant detection, and are reported to an independent certified Medical Review Officer prior to being released to the Borough.
- Observed urine collections will only be conducted with the consent of the donor, and the observer shall be by a person whose gender matches the donor's gender as identified by the donor at the beginning of the observed collection.
- Observed collections shall be conducted in a professional manner that minimizes discomfort to the donor, and a medical professional may serve as the monitor, regardless of gender.
- The Medical Review Officer (MRO) may recommend the collection of an alternate specimen (e.g., oral fluid) when a donor is unable to provide a sufficient amount of urine specimen at the collection site.
- The MRO will verify that chain of custody procedures was adhered to, use of a certified laboratory and that the test results were valid.
- The Borough provides reasonable accommodations to employees and/or applicants in the alcohol and drug testing program whose physical condition prevents them from producing a urine specimen suitable for testing.
- An Employee may contact the DER if they wish to make an accommodation request.
- In accordance with Borough policy, a test result reported by the laboratory as a negative dilute urine test is not considered a negative test but subjects the donor to immediate retesting; and a second negative dilute urine test will render an applicant ineligible for hire and current employees, where a negative test is required, not currently fit for duty.
- FDA approved on-site screening devices may be utilized with all initial positive results confirmed by laboratory testing.
- All positive initial tests are confirmed by GC/MS at established DOT cut off levels. An Alcohol content of 0.04 or higher using a DOT approved alcohol screening device, or breath alcohol device, is classified as a positive test.
- The drugs tested for may include all or some of the following: (1) Amphetamines; (2) Cannabinoids; (3) Cocaine; (4) Phencyclidine (PCP); (5) Opioids, designer drugs, or a metabolite of any of the above substances and mind-altering synthetic narcotics or designer drugs, or impairing effect medications or substances, taken by employees working in a safety-sensitive classified position, in order for the employer to fulfill its duty to provide a safe place to work as a safety rule.
- The term “illegal use of drugs” includes any controlled or scheduled drug not used in accordance with a health care provider’s lawful prescription for the user, or any substances banned by Federal or applicable State laws.

What About Impairing Effect Medications or Substances?

- Any employee working in a safety-sensitive classified position as defined by this policy is required, as a safety rule, to pre-duty disclosure that they are taking or using ANY impairing effect prescription, including medical marijuana, over-the-counter medications, mind altering synthetic or designer drugs or other substance which may have an effect on performance of safety-sensitive duties.
- If the fact that the employee is taking or using an impairing effect medication or substance is not disclosed pre-duty by a safety-sensitive classified employee and the employee tests positive, is otherwise determined to be taking or using such, or is determined by the MRO to be a potential safety risk due to taking or using an impairing effect medication or substance, that employee shall be subject to discipline, up to and including termination, for violation of this safety rule.
- If disclosure is made, the Borough reserves the right to send the employee for a Fitness-for-Duty evaluation to evaluate the medication or substance and its effects on the performance of safety-sensitive duties.
- In advance of testing, employees are encouraged to have their own doctor make an individualized assessment of any safety-related risks of the medications or substances which they are taking or using, providing the doctor a copy of their job description, and having the doctor render an opinion on the safety-related risks.
- The employee need not disclose to the Borough the medication or medical condition involved to fulfill the disclosure obligation of this Policy.
- All information provided shall be kept separate from personnel files and in a confidential manner.
- The MRO, or another Medical Professional selected by the Borough, will make the final determination on the safety-related risks of any particular medication or substance.

What if an Adulterant is Found?

- The use of an adulterant (something added to a specimen to attempt to hide drug use) is considered a refusal to test and a violation of the Policy. The same would be true if you attempted to substitute a specimen.
- Any employee who is found to have violated this Policy by attempting to defraud a drug or alcohol test may be subject to appropriate disciplinary action, up to and including termination for willful misconduct connected with work, or withdrawal of a job offer.
- No last chance opportunity is available under such a circumstance.
- It is a criminal offense to substitute or adulterate a test specimen.
- It also is a criminal offense in New Jersey to manufacture, sell, give away, or possess any device or substance designed or commonly used to substitute or adulterate a test specimen. *N.J. Stat. Ann. § 2C:36-10.*
- The MRO may declare a urine specimen to be adulterated or substituted based on the laboratory report.

What If I Refuse?

- A refusal to provide a specimen for testing, unless the MRO agrees a medically valid reason exists for your inability, shall be considered willful misconduct connected with work. Such willful misconduct connected with work will cause an applicant's offer to be withdrawn and will subject an employee to immediate termination for cause.
- Under New Jersey law, unemployment compensation benefits may not be available in such a circumstance.
- Failure to report for specimen collection within a reasonable time, two (2) hours of being directed to do so is also classified as a refusal under the Borough Policy.

Employees with a Substance Abuse Problem

- The Borough will provide support for employees who need support and help with alcohol or drug

dependency via confidential Employee Assistance Program (EAP), Substance Abuse Professional (SAP) or Medical/Occupational Health support services.

- Employees who proactively seek treatment for substance abuse shall be treated sympathetically and in a confidential manner.
- In certain cases, this may require a transfer to other duties (e.g., where a person is working in a safety critical role) while the individual is receiving treatment.
- The fact that an employee is seeking or undergoing treatment will not be a defense to a charge of willful misconduct if the employee reports for work under the influence of alcohol or drugs.
- The Policy encourages any employee with a drug or alcohol problem to seek help voluntarily and confidentially through Borough EAP/SAP program.
- Coming forward after you have been notified to report for testing is not considered a voluntary report.
- For confidential help with a substance abuse problem, contact the DER or EAP/SAP.
- Counseling and rehabilitation for alcohol or substance abuse is available through the EAP and may also be available under the health and welfare benefit program for employees, **only to the extent of the current benefits package.**
- The Borough will assume no direct financial responsibility for counseling or rehabilitation costs of an employee, not covered by the EAP.
- Any costs in addition to or more than any available health benefits are the employee's responsibility.
- A list of state and national Substance Abuse Resources is a part of this Policy.

Last Chance Opportunity

- **No** last chance opportunity is available to a probationary, part-time, or temporary employee, or in the case of refusal, attempted adulteration, substitution, switching, tampering with, or diluting of a specimen or attempt to defraud a drug test.
- Employees who receive an EAP/SAP evaluation favorable for rehabilitation may be offered a last chance agreement which will subject the employee to unannounced follow-up testing for up to 12 months, together with other educational and counseling requirements as recommend by the EAP/SAP.
    - A negative return to duty test is required to be placed back on active duty.
    - A positive test, refusal, or failure to comply with any term of the last chance agreement during this follow-up period will subject the employee to immediate termination.

Why and When the Borough Tests

- **Pre-employment**
    - All applicants as a condition of their employment.
    - Drug testing shall be performed on all final applicants for safety-sensitive positions, or who transfer into a safety-sensitive position, as a condition of their employment.
- **Routine Fitness-for-Duty**
    - Safety-sensitive employees may be required to submit to a drug test as part of a routine Fitness-for-Duty examination and may be based on a particular job classification.
- **Reasonable Suspicion**
    - All employees shall be required to submit to a drug and/or alcohol test if the Borough has a reasonable suspicion that an employee is under the influence of drugs or alcohol, which adversely affect or could adversely affect the employee's job performance.
    - Employees selected for testing shall be suspended until a negative drug/alcohol screen or laboratory test result is received. If it is a negative result, the employee will not suffer a loss of pay.
- **Post-Accident/Incident Testing**
    - Testing of a safety-sensitive employee may be conducted under any of the following circumstances:
        - the employee involved in the incident/accident was actively engaged in the activity which objectively could have caused or contributed to the injury or damage; or
        - the employee was operating, controlling, or repairing any machinery, tool, device, equipment, or vehicle that was involved in the incident/accident; or
        - the employee's action or inaction was likely a contributing factor to the incident/accident or cannot be completely discounted as a contributing factor based on current info; or
        - testing is being conducted as part of the Borough's Post Incident/Accident Investigation related to possible Workers' Compensation Disqualification; or
        - testing is being conducted for other non-injured employees whose actions, or inaction, could have contributed to the incident/accident as part of a root cause investigation; or
        - post-accident drug testing is required by the Workers' Compensation Carrier or Fund.
- **Random Testing**
    - Employees in safety-sensitive positions are subject to random drug testing.
    - Employees subject to testing are randomly selected, using scientifically valid methods, from a "pool" of covered employees.
    - Those employees who classified as CDL safety-sensitive employees shall be placed in in a separate testing "pool."
- **Rehabilitation/Follow-up**
    - An employee who has voluntarily requested rehabilitation prior to a positive drug test may be subject to unannounced drug and/or alcohol testing under a work continuation agreement, to determine whether they are under the influence of alcohol or drugs after successful completion of

the rehabilitation program.
- The testing shall be without notice in conjunction with a referral for treatment.

Prohibited Conduct

- Employees, applicants, and Contractors for the Borough are strictly prohibited from engaging in the following conduct:
  1) With respect to illegal drugs, employees and applicants violate this Policy by engaging in the following conduct, whether during work time or on Borough premises or property and are subject to discipline up to and including discharge, or rejection of the application for employment, or cancellation of contractual agreements:
     a. Testing positive in a confirmed drug or alcohol test or refusing to be tested.
     b. Bringing and/or storing (including in a desk, locker, automobile, or other repository) illegal drugs or drug paraphernalia on Borough premises or property, including Borough-owned or leased vehicles, or vehicles used for Borough purposes.
     c. Having possession of, being under the influence of, testing positive for, or being in close proximity to persons using illegal drugs, or otherwise having in one's system illegal drugs.
     d. Using, consuming, transporting, distributing, or attempting to distribute, manufacturing, selling, or dispensing illegal drugs. In addition, the Borough will refer such matters to the appropriate police authority.
     e. A conviction or plea of guilty relative to any criminal drug offense occurring in the workplace. All employees must notify the Borough in writing of any criminal drug conviction no later than five (5) calendar days after such conviction. Drug use off-the-job which adversely affects an employee's performance on the job, or which has the potential to jeopardize the health or safety of other employees, the public or the Borough's equipment or function, shall be cause for disciplinary action up to and including dismissal. Action shall be taken against employees who are convicted for an off-the job drug offence. In deciding what action shall be taken, the incident shall be evaluated in terms of the nature of the conviction, the employee's job assignment, the employee's record with the Borough and other factors related to the impact of the employee's conviction on the Borough.
     f. Abuse of prescription drugs which includes exceeding the recommended prescribed dosage or using others' prescribed medications. Such prescriptions brought to work should remain in the original labeled container and show both the prescribing doctor's name and the prescription's expiration date.
     g. Switching, tampering with, diluting, or adulterating any specimen or sample collected under this Policy, or attempting to do so.
     h. Refusing to cooperate with the terms of this Policy which includes submitting to questioning, drug testing, medical or physical tests or examinations, when requested or conducted by the Borough or its designee, is a violation of Borough Policy and may result in disciplinary action up to and including termination. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork or failing to report to the collection site at the appointed time.
     i. Failure to advise pre-duty the Borough of the use of a prescription or over-the-counter drug which may alter the employee's ability to safely perform the essential functions of their job.
     j. Failure of an employee to notify their supervisor before reporting to work if they believe they are under the influence of drugs.
  2) With respect to alcohol and cannabis, employees violate this Policy by engaging in the following conduct during work time or on Borough premises or property:
     a. Bringing and/or storing (including in a desk, locker, automobile, or other repository) alcohol or cannabis on Borough premises or property, including Borough owned or leased vehicles, or vehicles used for Borough purposes.

b. Having possession of, being under the influence of, testing positive for or having in one's system, alcohol, or cannabis. Using, consuming, transporting, distributing, or attempting to distribute, manufacturing, selling, or dispensing alcohol or cannabis. As it relates to a positive drug test for cannabis, an employee violates this policy if there is both positive drug test and evidence-based documentation of physical signs or other evidence of impairment during the employee's work hours. *Exceptions to the policy concerning alcohol consumption or possession may be made only upon the prior explicit approval of senior management for specifically identified circumstances.*
c. A conviction or plea of guilty relative to any criminal alcohol or cannabis offense occurring in the workplace. All employees must notify Borough in writing of any criminal alcohol or cannabis conviction not later than five calendar days after such conviction. Alcohol or cannabis use off-the-job which adversely affects an employee's performance on the job, or which has the potential to jeopardize the health or safety of other employees, the public or Borough's equipment or function, shall be cause for disciplinary action up to and including dismissal. Action shall be taken against employees who are convicted for an off-the job alcohol or cannabis offense. In deciding what action shall be taken, the incident shall be evaluated in terms of the nature of the conviction, the employee's job assignment, the employee's record with the Borough and other factors related to the impact of the employee's conviction on the Borough.
d. Switching, tampering with, or adulterating any specimen or sample collected under this Policy, or attempting to do so.
e. Refusing to cooperate with the terms of this Policy which includes submitting to questioning, alcohol, or drug testing, medical or physical tests or examinations, when requested or conducted.

What if I Test Positive?

- The Medical Review Officer (MRO) will contact you confidentially to give you an opportunity to discuss your results before reporting them to the Borough as a verified positive.
- You may discuss the result with the MRO up to seventy-two (72) hours after a positive result and ask questions of the MRO about prescription and non-prescription medications, rebut, or explain the test results to the MRO, and provide supporting documentation. During this 72-hour period, any applicant or employee may request that their split specimen be tested at a second laboratory and if positive, they shall be responsible for that expense and that cost may be deducted from their paycheck, depending upon the result and, if negative, the employee shall be reimbursed by the Borough for the cost of the test and any lost time.
- Under federal regulations, the MRO has the discretionary authority to notify the Borough that an employee is temporarily medically disqualified from the performance of safety-sensitive work during this evaluation period and has the duty to notify the Borough if the employee is taking an impairing effect medication.
- A positive drug or alcohol test is classified as willful misconduct and a violation of the Borough's Policy.
- Any employee who tests positive, or refuses to be tested, may be subject to appropriate disciplinary action for engaging in willful misconduct connected with work, up to and including immediate termination, for gross misconduct connected with work, and violation of a safety rule for those employees working in a safety-sensitive position and/or forfeit eligibility for Worker's Compensation benefits *N.J. Stat. Ann. § 34:15-7* if post-accident and may adversely affect an employee's eligibility to receive Unemployment Compensation benefits.
- Any applicant made a conditional offer that tests positive, or refuses to be tested, shall be denied employment, or have their offer withdrawn.

What about Cannabis Testing?

- As it relates to cannabis, an employee shall be subject to adverse action if there is both a positive drug test, confirmed by a licensed laboratory, and a determination of reasonable suspicion based on documentation of physical signs or other evidence of impairment during the employee's work hours When the New Jersey Cannabis Regulatory Commission issues standards for certification of a Workplace Impairment Recognition Expert ("WIRE"), an employee shall be subject to adverse action if there is both a positive drug test and a physical evaluation by a WIRE.
- Applicants for non-CDL positions will not be denied employment based solely on a positive pre-employment drug test for cannabis, except for law enforcement officers assigned to a federal task force, holding a federally regulated license requiring testing or applying to an agency that is specifically required to test for cannabis by the terms of a federal contract or federal grant.

What if I Fail to Follow Safety Guidelines due to Impairment?

- Often, impairment from drugs or alcohol will cause an employee to fail to adhere to safety guidelines and other common sense safe working practices.
- Failure to wear a seatbelt, failure to use Borough provided or required safety equipment, failure to follow safety guidelines, or removal (or disabling) of a safety guard shall be willful misconduct connected with work, and subject the employee to discipline, up to and including discharge for violation of Borough Policy.

of other employees, the public or the Borough's equipment or function, shall be cause for disciplinary action up to and including dismissal. Action shall be taken against employees who are convicted of an off-the job drug offence. In deciding what action shall be taken, the incident shall be evaluated in terms of the nature of the conviction, the employee's job assignment, the employee's record with the Borough and other factors related to the impact of the employee's conviction on the Borough.

f. Abuse of prescription drugs which includes exceeding the recommended prescribed dosage using others' prescribed medications. Such prescriptions brought to work should remain in the original labeled container and show both the prescribing doctor's name and the prescription's expiration date.
g. Switching, tampering with, diluting, or adulterating any specimen or sample collected under this Policy, or attempting to do so.
h. Refusing to cooperate with the terms of this Policy which includes submitting to questioning, drug testing, medical or physical tests or examinations, when requested or conducted by the Borough or its designee, is a violation of Borough Policy and may result in disciplinary action up to and including termination. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork or failing to report to the collection site at the appointed time.
i. Failure to advise pre-duty the Borough of the use of a prescription or over-the-counter drug which may alter the employee's ability to safely perform the essential functions of their job.
j. Failure of an employee to notify their supervisor before reporting to work if they believe they are under the influence of drugs.

2) With respect to alcohol and cannabis, employees violate this Policy by engaging in the following conduct during work time or on Borough premises or property:
   a. Bringing and/or storing (including in a desk, locker, automobile, or other repository) alcohol or cannabis on Borough premises or property, including Borough owned or leased vehicles, or vehicles used for Borough purposes.
   b. Having possession of, being under the influence of, testing positive for or having in one's system, alcohol, or cannabis. Using, consuming, transporting, distributing, or attempting to distribute, manufacturing, selling, or dispensing alcohol or cannabis. As it relates to a positive

drug test for cannabis, an employee violates this policy if there is both positive drug test and evidence-based documentation of physical signs or other evidence of impairment during the employee's work hours. *Exceptions to the policy concerning alcohol consumption or possession may be made only upon the prior explicit approval of senior management for specifically identified circumstances.*

c. A conviction or plea of guilty relative to any criminal alcohol or cannabis offense occurring in the workplace. All employees must notify Borough in writing of any criminal alcohol or cannabis conviction not later than five calendar days after such conviction. Alcohol or cannabis use off-the-job which adversely affects an employee's performance on the job, or which has the potential to jeopardize the health or safety of other employees, the public or Borough's equipment or function, shall be cause for disciplinary action up to and including dismissal. Action shall be taken against employees who are convicted for an off-the job alcohol or cannabis offense. In deciding what action shall be taken, the incident shall be evaluated in terms of the nature of the conviction, the employee's job assignment, the employee's record with the Borough and other factors related to the impact of the employee's conviction on the Borough. Switching, tampering with, or adulterating any specimen or sample collected under this Policy, or attempting to do so.

d. Refusing to cooperate with the terms of this Policy which includes submitting to questioning, alcohol, or drug testing, medical or physical tests or examinations, when requested or conducted.by the Borough or its designee, is a violation of Borough Policy and may result in disciplinary action, up to and including termination. A refusal to test includes conduct obstructing testing such as failure to sign necessary paperwork or failing to report to the collection site at the appointed time.

e. Failure of employee to notify their supervisor before reporting to work if they believe they are under the influence of alcohol or cannabis.

Only with your help can we truly have a safe, pleasant, and productive work environment!

How Can You Help?

1. If you are doing drugs – **STOP!**
2. If you need help – **ASK!**
3. If you know someone at work who is doing drugs – **TAKE ACTION!**
4. Don't let someone else's drug or alcohol problem be the cause of an **ON-THE-JOB INJURY!**

Drug Educational Information

- The drug educational information is provided to assist employees in recognizing the impairing effects of drug use.
- The Borough will conduct employee education of substance abuse and awareness and supervisor training on how to recognize signs of abuse, how to document and collaborate signs of employee substance abuse, and how to refer substance abusing employees to the EAP.

Alcohol (Depressant)

Common Forms: Beer, wine, hard liquor

How Used: Oral ingestion, patterns of use vary.

Desired Effect: People drink to relax, to socialize, as a part of a religious ceremony, for the control of physical and emotional pain, or for a variety of other reasons. Its depression of the central nervous system is progressive and continuous. It is a mood-modifying drug that usually provides a temporary feeling of mild euphoria and stimulation. This is a result of the initial depression of the higher centers of the brain which controls inhibition. The more you drink, the more sedated you become.

Time in Body: Depends on many factors, such as body size, amount of alcohol consumed within an hour, and other individual factors. Performance is affected in relation to the amount consumed. Generally, a medium-sized person eliminates the equivalent of one drink per hour. However, "hangover" effects of alcohol have been documented for as long as 14 hours after consuming an intoxicating dose , well after the blood alcohol levels have returned to zero.

Observable Effects:
- Staggering gait
- Slurred speech
- Odor of alcoholic beverage
- Shaky Hands
- Eyes react slowly to light -wears sunglasses.
- Poor eye-hand coordination
- Slowed reaction time.

Work behavior:
- Arrive late, leave early, mis-outs.
- Neglect of physical appearance
- Restlessness
- Tremors (hands, face, fingers, lips tongue)
- Slurred speech
- Uninhibited - makes inappropriate remarks.

Material Indicators: Empty liquor bottles, cans, often in paper bags. Flasks, sometimes disguised as other things

Slang Terms: Booze, juice, hooch, grape, eye-opener, hair-of-the-dog, brew, suds, etc

Amphetamines (Amphetamine and Methamphetamine) – A Stimulant

Common Forms: Amphetamine - usually capsules or white, flat, double-scored pills. Methamphetamine - white or granular powder, often packaged in aluminum foil or plastic bags.

How Used: Orally, sniffed up the nose, or injected.

Desired Effects: Most commonly sought aftereffects include euphoria, postponement of fatigue, increased energy, alertness and feelings of personal power. Repeated or chronic use often causes a strong dependence, reaction and a schizophrenic loss contact with reality. Users coming off the drug experience extreme fatigue-induced sleep ("crash"), often followed by continued fatigue and depression.

Time in Body: Injection or sniffed up the nose; "rush" felt within 1 minute. Orally, effects felt within about ½ hour. Single doses detectable for about 48 hours.

Observable Effects: Dilated pupils. Flushed face, rapid respiration, profuse sweating. hyper-excitability, talkativeness, restlessness. "Stereotypic" behavior often seen: person engages in repetitive tasks or mannerisms for extended periods of time. In large doses, inability to concentrate, confusion, panic.

Work Behavior:Try to do job beyond competence level. Impaired ability to operate equipment. Takes chances, risks.

Material Indicators: Pills, capsules, white powder, granular crystals
Foil wrapped tubes, baggies. Hypodermics and paraphernalia for injections

Slang terms: Defies, bennies, speed, crank, ice, crystal, white crosses, black beauties.

Cocaine - A Stimulant

Common Forms: Cocaine - White crystalline powder. Free-base cocaine (crack) - white granular "rocks"

How Used: Cocaine--usually snorted up the nose through a straw or from a "coke spoon" after being chopped to a fine powder with a razor blade. "Crack" -- freebase cocaine--is a processed version which is vaporized in a pipe and inhaled. Either form may also be injected.

Desired Effect: Most commonly sought aftereffects are euphoria, stimulation, postponement of fatigue and feelings of personal power. The "high" lasts approximately one hour, with a "down" follow-on period. Psychological and physical dependence to "crack" after one to two uses; dependency to snorted coke takes longer to develop.

Time in Body: Single doses detectable for 12-24 hours

Observable Effects: Dilated pupils. Talkativeness, restlessness. Sniffing, runny nose irritated or bloody nose. Dramatic mood swings, from "down" to "up" in minutes. Sense of power sometimes manifested in aggressiveness.

Work Issues: Frequent trips "to the restroom"—secluded place. Frequent sick-outs and unexplained absences. Hyper-excitability and over-reaction to stimulus. Isolation/withdrawal from friends and activities. Financial problems--borrows, steals and/or sells to support habit. Insomnia, restlessness, lack of sleep

Material Indicators: Small, folded paper envelopes (bindles), plastic bags, small vials used to store drug. Razor blades, mirrors, cut off straws, coke spoons. Small glass pipes, and heat sources used to volatilize crack.

Slang Terms: Coke, snow, toot, crack, blow, happy dust, "C"

Marijuana

Common Forms:	Dried green-brown flowers and leaves of the hemp (cannabis) plant--also as compressed tar like lumps (hashish) and sometimes as an oil to be spread on cigarettes (hash oil).
How Used:	Generally smoked in hand-rolled cigarettes (joints) or a small pipe, sometimes eaten in baked goods or steeped to make a tea.
Desired Effects:	Effects are somewhat dependent on the user and potency of the plant. Low doses tend to produce a dreamy state of relaxation and euphoria with changes in sensory perceptions (usually intensified) and alteration in thought formation and expression. Higher doses intensify these reactions with fragmentation of thought, memory impairment, shortened attention span, and illusions of insight. Marijuana currently sold on the street is 10 times more potent today than in past years.
Time in Body:	Marijuana dissolves in body fat cells and is detectable for extended periods of time--up to seven (7) days for occasional users and four (4) weeks or longer for chronic users.
Observable Effects:	Red bloodshot glassy eyes (users often wear dark glasses and use eye drops to combat). Poor muscular control. Rambling disconnected speech patterns. Euphoria--as laughing out of context. Getting "hung up" - i.e. going into the bathroom to comb your hair and coming out two hours later. Distinctive odor in air and/or on clothing.
Work Issues:	Lack of attention, vision and auditory changes, and poor muscular control. Inability to respond to emergencies and sudden situational changes. Frequent sick-outs and mis-outs. Lackadaisical "I don't care" attitude about person and work. Chronic health problems for frequent users--persistent cough, fatigue, frequent sickness.
Material Indicators:	Baggies of green-brown vegetable matter; rolling papers; small pipes (for marijuana) and very small pipes (for hashish); "roach clips" to hold the burned end of the marijuana cigarette, "roaches" discarded on the floor or in ash trays, distinctive odor of marijuana in the air.
Slang Terms:	Dope, grass, reefer, weed, ganja, pot, etc.

Opioids (Morphine and Codeine) Narcotic Depressants

Common Forms:	Street forms are pills, liquids, and powders. Morphine is derived from opium. Opium dissolved in alcohol, containing 10% morphine, is legally available in many states as “paregoric." Morphine and codeine are widely used medicinally. Morphine is a naturally occurring alkaloid and is also found in products containing poppy seeds. Heroin is a semi-synthetic derivative of morphine.
How Used:	Opium is usually smoked. Codeine is most commonly taken orally. Heroin and morphine are injected; powders can be snorted; cigarettes can be dipped in paregoric and smoked.
Desired Effects:	Most commonly effects include euphoria, relief from pain, and a feeling of dissociated well-being. Low maintenance doses allow the addict to function daily. The heroin user experiences a "rush" described as a very pleasurable whole-body reaction lasting 5-10 minutes, followed by several hours of mental and physical relaxation.
Time in Body:	Single doses are usually detectable for 48-72 hours.
Observable Effects:	Pinpoint pupils. Sweating, nausea, vomiting in novice users. "Nodding off"--the head drooping toward the chest, then bobbing up. Overly calm, detached facial expression. Confusion, mental dullness, and slurred speech. Needle marks over veins.
Work Issues:	Increased sick-outs, mis-outs. Lack of interest in work, no attention to detail. Sharing needles brings a high risk of contracting hepatitis and/or AIDS. High cost of the addiction may lead to borrowing money, stealing, and selling (on or off the premises).
Material Indicators:	Foil or paper "bindles" for holding the drug. Charred spoons or bottle caps, used to cook the drug. Multiple burned matches used to cook the drug. Needles, syringes, eye droppers used for injection. Balloons or prophylactics used to hold drug. Bloody tissue papers, blood on shirt sleeves.
Slang Terms:	Heroin, dope, smack, shit, hard stuff, "H", China, monkey dust, China White, etc.

Phencyclidine (PCP)

Common Forms: Pills, liquid, powder, and PCP cigarettes

How Used:	Usually smoked with tobacco or marijuana, but may be injected, swallowed, eaten or snorted.
Desired Effects:	Users report desirable feelings of immobility, numbness, and detachment. Other sought aftereffects include feelings of strength, power, and invulnerability, a dream-like detachment from reality (often coupled with lack of coordination).
Time in Body:	Usually detectable 1- 8 days, but chronic users may test positive for several weeks following the last dose.
Observable Effects:	Low doses: Sedated, euphoric, uncoordinated behavior. Wide mood swings. Sparse and purposeless speech. Muscle rigidity and jerky eye movements (nystagmus).
High Doses:	Coma-like states with muscle rigidity and staring, half-closed eyes. Sudden stimuli may send the user into a psychotic state, with extreme agitation, violent behavior, abnormal strength, and inability to speak or comprehend.
Work Issues:	Wide mood swings, unpredictable behavior, aggressive. Tremendous liability in the work force.
Material Indicators:	Cigarettes that look as if they have been wet. Crystals, liquids or powders in small vials. Folded aluminum foil or paper packets.
Slang Terms:	PCP, angel dust, hog, dust, DOA, shermans, sherms, peace pills, dummy, etc.

Substance Abuse Professionals

NATIONAL RESOURCES

A2Z Alcohol & Drug Abuse-Addiction…….. 1-800-274-2042
Al-Anon/Alateen Family Group Headquarters……... 1-800-356-9996
Alcoholics Anonymous World Service……... 1-212-870-3400
American Council on Alcoholism Helpline…… 1-800-527-5344
800 Cocaine--An Information and Referral Hotline……... 1-800-262-2463
Nar-Anon Family Group Headquarters…….. 1-310-547-5800
Narcotics Anonymous……. 1-818-773-9999
National Association of Alcoholism (NAADAC)…….. 1-800-548-0497

- www.naadac.org……...Fax: 1-800-377-1136

National Association of Addiction Treatment Professionals…….. 1-717-581-1901

- www.naatp.org

National Council on Alcoholism and Drug Dependence, Inc.....1-212-269-7797

- www.ncadd.org

Hope Line (24-hour affiliate referral).....1-800-NCA-CALL
Center for Substance Abuse Prevention's Workplace Hotline.....1-800-WORKPLACE
National Clearinghouse for Alcohol & Drug Information.....1-800-729-6686
Center for Substance Abuse Prevention's Drug Information,
Treatment & referral Hotline 1-800-662-HELP

- (Spanish-Espanol) 1-800-662-AYUDA

Borough of Mendham
Drug And Alcohol-Free Workplace Policy
Notice to All Employees and Job Applicants

DRUG AND ALCOHOL-FREE WORKPLACE

- This Policy highlights the Borough's New Jersey Drug-Free Workplace Policy. Compliance with this policy is a condition of your hire or continued employment. The Borough has developed its drug-free workplace policy in compliance with New Jersey Laws, *and the Fourth Amendment to the United States Constitution as it covers employees of governmental entities*.
- The Borough recognizes the prime importance to the Borough of protecting the safety, health and welfare of its employees and others with whom we interface such as citizens, contractors, and members of the public. The objective of this policy is to maintain a working environment free from the effects of substance abuse.
- While the Borough has no intention of intruding into the private lives of its employees or preventing them from taking the medicine that they may need to stay safe and healthy, the Borough does expect employees to report to work unimpaired able to perform the duties of their job safely and effectively. In addition to absenteeism and accidents, substance abuse can adversely affect performance, productivity, and workplace morale. Co-workers may feel that they must cover up or work harder because of someone's alcohol or drug use. An employee with an alcohol or drugs problem may lose their job and/or suffer devastating effects on their health.
- The Borough has a duty to safeguard its employees and the public from the risk of harm from employees who work under the influence of alcohol and drugs. Similarly, employees who know that a fellow employee is working under the influence, owe a similar duty. The failure to honor that duty by taking the right steps to prevent this risk can result in legal liability.
- Notice of the Borough's Drug and Alcohol Testing Policy shall be included in job postings and shall be posted in conspicuous locations on Borough premises.
- All Job Applicants are required to sign the **Pre-Employment Substance Testing Consent and Release Form [DFW02]** and complete a pre-employment substance test.
- The Borough's Designated Employer Representative (DER) is the Personnel & Payroll Coordinator, and the Alternative DER is the Borough Administrator.
- To the extent this Policy supplements, and does not conflict with current collective bargaining agreements, it is applicable.

Borough of Mendham
Drug And Alcohol-Free Workplace Policy Active Employee Certificate of Receipt [DFW01]

I do hereby certify that I have received and read the New Jersey Drug-Free Workplace Policy, which explains the Borough's adherence to New Jersey Laws. I have had the terms and conditions of the Borough's Drug and Alcohol Testing policy explained to me relative to screening or tests by the Borough for the purpose of determining the presence of, and content of, any or all of the following substances under circumstances as set forth in the Borough's Policy:

1. Amphetamines
2. Cannabinoids
3. Opioids
4. Phencyclidine (PCP)
5. Cocaine

Testing may also include a metabolite of any of the above substances and mind-altering synthetic narcotics or designer drugs. The term "illegal use of drugs" includes any controlled or scheduled drug not used in accordance with a health care provider's lawful prescription for the user, or any substances banned by Federal or applicable State laws.

I understand that any employee who tests positive, or refuses to be tested, may be subject to appropriate disciplinary action for engaging in willful misconduct connected with work, up to and including immediate termination, and/or forfeit eligibility for Worker's Compensation benefits *N.J. Stat. Ann. § 34:15-7* if post-accident and may adversely affect an employee's eligibility to receive Unemployment Compensation benefits.

POSITIVE DRUG OR ALCOHOL TEST OR REFUSAL TO TEST CONSEQUENCES:

1) **Classified as a positive test or refusal to test.**
2) **Discharge from employment.**
3) **Possible disqualification from Workers' Compensation Benefits.**
4) **Possible disqualification from Unemployment Compensation Benefits.**

I also understand that it is not the purpose of this test to identify any disability I may have and that all activities shall be conducted in accordance with ADA regulations.

I also understand that the Borough and/or its designated representative will collect specimens for testing for the purpose of determining the presence of, and content of, drug and alcohol substances, as well as to obtain results from any alcohol or drug test administered post-accident by law enforcement and release of the results of said tests to the Borough, its DERs, to the Borough's Medical Review Officer, and as set forth in the Policy.

Employee Printed Name: _____

Employee Signature: _____ Date: _____

Witness Printed Name: _____

Witness Signature: _____ Date: _____

(This form is to be signed by the employee and retained in their personnel file.)

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Borough of Mendham
Pre-Employment Substance Testing
Consent and Release Form
[DFW02]

I do hereby certify that I have been given notice of the Borough's pre-employment substance abuse testing policy; that I have been provided with access to a copy of the Borough's New Jersey Drug-Free Workplace Policy and have been made a conditional offer of employment. I hereby freely and voluntarily consent to submit to tests as shall be determined by the Borough in the selection process of final applicants for employment, for the purpose of determining the presence of, and content of, any or all of the following substances:

1. Amphetamines
2. Cannabinoids (for certain employment positions)
3. Opioids
4. Phencyclidine (PCP)
5. Cocaine

Testing may also include a metabolite of any of the above substances and mind-altering synthetic narcotics or designer drugs. The term "illegal use of drugs" includes any controlled or scheduled drug not used in accordance with a health care provider's lawful prescription for the user, or any substances banned by Federal or applicable State laws.

I agree that the employer representative, collection site, physician, or clinic may collect these specimens for screening or testing and may screen them or forward them to a testing laboratory for analysis. I further agree to and hereby authorize the release of the results of said tests to the Borough, its DERs, and to its Medical Review Officer and its agents as provided in the Policy.

I understand that a negative test is a pre-condition of employment with the Borough and that refusal to submit to testing, or a positive test result will result in the rejection of my application, or the rescinding of a conditional offer of employment. I also understand that it is not the purpose of this screen or test to identify any disability I may have, and that pre-employment screening and testing activities are conducted in compliance with ADA requirements.

I further agree that a reproduced copy of this pre-employment consent and release form shall have the same force and effect as the original and shall continue while my application is being considered and during any post-consideration proceedings. I have carefully read the foregoing and fully understand its contents. I acknowledge that my signing of this consent and release form is a voluntary act on my part and that I have not been coerced into signing this document by anyone.

Applicant Printed Name: _____ SS#_____

Applicant Signature: _____ Date_____

Witness Printed Name: _____

Witness Signature: _____ Date_____

1-of-1

Borough of Mendham
Acknowledgment of Consequences of Refusal to Participate in Drug Testing
[DFW03]

I,_____, an employee of the Borough of Mendham, acknowledge that I am refusing to report for Drug and Alcohol testing in accordance with the requirements of the Borough's New Jersey Drug-Free Workplace Policy. I am aware that I am in violation of the Policy. I am aware that I am subject to certain adverse consequences as a result of my choice.

REFUSAL CONSEQUENCES:

1) **Classified as a refusal to test.**
2) **Possible Discharge from employment.**
3) **Possible Disqualification from Workers' Compensation Benefits.**
4) **Possible Disqualification from Unemployment Compensation Benefits.**

I have read this Acknowledgment of Consequences of Refusal to Participate in Drug Testing and understand it.

Employee Signature	Date
Witness Signature	Witness Address
	City State Zip

If employee refuses to sign, please have two witnesses sign below.

Witness 1 Signature	Witness 2 Signature
Address	Address
City State Zip	City State Zip

1-of-1

DESIGNATED EMPLOYER REPRESENTATIVE (DER)
CHECKLIST AND GUIDELINES

The following checklist outlines the DER and/or alternate DER duties and responsibilities:

DER Checklist and Guidelines

- ❑ Populate the **Drug and Alcohol Testing Policy Development Worksheet** with the information specific to the Borough and have this reviewed by legal counsel.
- ❑ Complete the **Determination of Safety-Sensitive Positions [DFW04]**.
  - This is a significant role in designating those as safety-sensitive in your policy.
  - ❑ Establish an **Employee Awareness Training** meeting date for the introduction of the **Drug and Alcohol Testing Policy** for employees.
- ❑ The Drug and Alcohol Testing Policy includes the following parts:
  - ❑ Policy
  - ❑ Drug Education Information
  - ❑ Substance Abuse Professionals Resource List
- ❑ Secure a drug and alcohol awareness video for the training meeting.
- ❑ Send out notice of the training meeting date and time.
- ❑ Make a copy of the Policy for each employee for the training meeting.
  - **Note: The Forms Toolkit and DER Guidelines** are not to be given to the employees at the meeting but can be viewed by them at any time.
- ❑ On the date of the Employee Awareness Training, have an Employee Awareness Training Session Log for employees to sign in.
- ❑ Distribute to each employee the following:
  - ❑ Drug and Alcohol Testing Policy
  - ❑ Drug Education Information
  - ❑ Substance Abuse Professional Resource List
  - ❑ The Active Employee Certificate of Agreement
  - ❑ Receipt of Drug-Free Workplace Policy Consent Form.
- ❑ Review significant Policy provisions at the training meeting.
- ❑ At the end of the training meeting, each active employee must sign the **Active Employee Certificate of Agreement Receipt of Employee Policy Statement Consent Form. [DFW01]** Collect and place it in their personnel file.
- ❑ Establish a time and date to conduct **Reasonable Suspicion Training for Supervisors**.
  - ❑ This training should be one hour for alcohol and one hour for drugs.
  - ❑ Must be conducted by someone who can issue certifications of such training.
- ❑ Prepare files for the **Borough Drug and Alcohol Testing Policy Records Retention** and maintain these files separate from personnel files the same as medical records.
- ❑ Select to assist with the Borough Program:
  - ❑ Certified Medical Review Officer
  - ❑ Laboratory
  - ❑ Collection Site
- ❑ Third-Party Administrator to assist with the Borough program.

Applicant and Employee Testing

- Have all applicants sign the **Pre-Employment Substance Testing Consent and Release Form [DFW02]** before you schedule them for a pre-employment drug test.
- If the employee fails to show for testing on time, you should receive a call from the collection site.
- Failure to show up on time is usually determined to be a "refusal to test" subjecting the employee to discipline or rejection of their application under the Borough Policy.
- If there is a refusal, the DRE may wish to consider faxing an **Acknowledgment of Consequences of Refusal to Participate in Drug or Alcohol Testing [DFW03]** to the collection site while the employee is still present.

CMRO Report

- The DRE should get to know the Certified Medical Review Officer (CMRO) and request them to explain their role and answer your questions.

Post-Accident

- In the event an employee is involved in a workplace accident, check that the employee is drug tested in accordance with the Borough Policy and worker's compensation requirements.

Reasonable Suspicion

- The trainer that you have selected for Supervisory Reasonable Suspicion training should be able to provide you both Contemporaneous and Long-term Observation checklists.

Refusal to Submit to Testing

- Use **Acknowledgment of Consequences of Refusal to Participate in Drug or Alcohol Testing [DFW03]** and have two (2) supervisors sign verifying the employee refusal.

Removal from Safety-Sensitive Duty on a Verified Positive or Refusal

- Do not wait on the CMRO's written report but act upon the CMRO's oral report of verified positive drug test, adulterated, or substituted drug test.

APPENDIX A

CDL Drug and Alcohol Testing Policy

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Appendix A Section A

GENERAL

This policy and 49 CFR Part 40 Regulations of the U. S. Department of Transportation Procedures for Transportation Workplace Drug And Alcohol Testing Programs and Urine Specimen Collection Guidelines, Office of Drug and Alcohol Policy and Compliance, U.S. Department of Transportation, are integral parts of this Policy and apply to all covered employees. They may be viewed at **http://www.dot.gov/odapc** Collection procedures, laboratory procedures, MRO review, alcohol testing, record keeping, and all other procedural requirements shall adhere to 49 CFR Part 40.

The Borough shall test, in accordance with Federal regulations, employees required to have a Commercial Driver's License (CDL) for the use of controlled substances that violate law or Federal regulation and the misuse of alcohol.

PURPOSE *382.101*

The purpose of this policy, in addition to meeting Federal regulations, is to establish a program designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

APPLICABILITY *382.103*

(a) This policy applies to every person of the Borough who operates a commercial motor vehicle in commerce in any State, and is subject to:

(1) The commercial driver's license requirements of part 383;

(2) All Drivers Operating Commercial Motor Vehicles for the Borough; or

(3) The commercial driver's license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this policy that apply to employers and the requirements in this policy that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

The **COVERED EMPLOYEE CERTIFICATE OF RECEIPT** contains the name, address, and phone number of the responsible individual(s). The CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY complies with requirements of the Department of Transportation regulations as set forth in 49 CFR § 382 and 49 CFR Part 40. The DER shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (random, post-accident, reasonable suspicion, etc.); maintaining a locked file system on all test results; and overseeing the referral of employees for evaluation and treatment. The Borough shall ensure that all covered employees are aware of the provisions and coverage of the Borough's CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY and that all employees are notified prior to testing.

BOROUGH CDL DRUG AND ALCOHOL TESTING POLICY CONTACT INFORMATION

DESIGNATED EMPLOYER REPRESENTATIVE (DER)

NAME:
TITLE:
ADDRESS:
PHONE:
E-MAIL:
HOURS WHEN AVAILABLE:

ALTERNATE DESIGNATED EMPLOYER REPRESENTATIVE (DER)

NAME:

MEDICAL REVIEW OFFICER (MRO)

NAME:
ADDRESS:
PHONE:
FAX:

LABORATORY
NAME:
ADDRESS:

SUBSTANCE ABUSE PROFESSIONAL (SAP)
NAME:
ADDRESS:
PHONE:

CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)
NAME:
ADDRESS:
PHONE:

BOROUGH'S INDEPENDENT AUTHORITY
This CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY sets forth the requirements of 49 CFR Parts 382 and 40. Those areas of the policy that appear in italic print reflect the Borough's independent authority to require additional provisions with regard to drug and alcohol testing procedures. To the extent the Borough's state specific non-DOT Policy supplements, and does not conflict with applicable DOT Regulations, and current agreements, it is to be followed. In the event that DOT Regulations are applicable to the driver's or applicant's particular situation or issue, the DOT Regulations pre-empt conflicting State Laws, the Borough's non-DOT Policies and all other agreements.

PERIOD OF WORKDAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE

- Safety-Sensitive Functions as covered under 49 CFR Part 382: In accordance with 49 CFR 382 drivers who possess CDL licenses are subject to DOT regulated alcohol and drug testing at all times from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:
  (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
  (2) All time inspecting equipment as required by 49 CFR 392.7 and 392.8 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 in operation;
  (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR 393.76);
  (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
  (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

- A driver is required to be in compliance with this policy during that period of the workday when they are on duty performing.
- *Safety-sensitive functions (See Definitions).*

DRIVER FITNESS FOR DUTY *391.11*

- DOT regulations provide that the Borough as a DOT regulated employer makes the final determination of who is a qualified individual to drive a commercial motor vehicle. 49 CFR § 391.11(a).
- The Borough shall not permit a person to drive a commercial motor vehicle unless the person meets all DOT minimum qualifications and such other more stringent qualifications and requirements relating to safety of operation and employee safety and health as it may decide in its judgment and discretion.
- The Borough shall use the services of independent Certified Medical Examiners, Occupational Medicine Physicians, Medical Review Officers, as well as other medical and industry professionals to make its final fitness for duty determinations.

TESTING PROCEDURES *382.105*

- The Borough shall ensure that all alcohol or controlled substances testing conducted under this policy complies with the procedures set forth in 49 CFR part 40.
- The provisions of 49 CFR part 40 that address alcohol or controlled substances testing are made applicable to the Borough by 382.105.

DEFINITIONS *382.107*

- Words or phrases used in this policy are defined in Sections 386.2, 390.5 and 40.3 of Federal regulations, except as provided herein.

Actual Knowledge for the Purpose of Section B of this Policy means actual knowledge by the Borough that a driver has used alcohol or controlled substances based on the Borough's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 382.307.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol's

including methyl and isopropyl alcohol.

Alcohol Concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this policy.

Alcohol Use means the drinking or swallowing of any beverage, liquid mixture, or preparation, (including any medication), containing alcohol. *[Caution: Certain brands and types of cough medicines contain alcohol.]*

CFR means Code of Federal Regulations.

Commerce means:

(1) Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and
(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in (1) of this definition.

- **It is the position of the Federal Motor Carrier Safety Administrator that the above section (2) language covers all municipal vehicles which fit within the "Commercial Motor Vehicle" definition below, even if that vehicle does not cross state lines.**

Commercial driver's license Drug and Alcohol Clearinghouse (Clearinghouse) means the FMCSA database that subpart G of 49 CFR Part 382.701-727 requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations. Effective January 6, 2020, the FMCSA will establish a mandatory database and the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

(1) A verified positive, adulterated, or substituted drug test result;
(2) An alcohol confirmation test with a concentration of 0.04 or higher;
(3) A refusal to submit to any test required by subpart C of this part;
(4) An employer's report of actual knowledge, as defined at § 382.107:
(5) On duty alcohol use pursuant to § 382.205;
(6) Pre-duty alcohol use pursuant to § 382.207;
(7) Alcohol use following an accident pursuant to § 382.209; and
(8) Controlled substance use pursuant to § 382.213;
(9) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
(10) A negative return-to-duty test; and
(11) An employer's report of completion of follow-up testing.

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

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or
(3) Is designed to transport 16 or more passengers, including the driver; or
(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation (or confirmatory) Drug Test means a second analytical procedure performed on a urine specimen

to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) Validity Test means a second test performed on a urine specimen to further support a validity test result.

Confirmed Drug Test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of Federal regulations.

Controlled Substances mean those substances identified in 40.85. As of January 1, 2018, the drugs tested for may include all or some of the following: (1) Amphetamines; (2) Cannabinoids; (3) Cocaine; (4) Phencyclidine (PCP); and (5) Opioids.

Designated Employer Representative (DER) is an individual identified by the Borough as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety- sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the Borough. Service agents cannot serve as DERs.

Disabling Damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) Inclusions. Damage to motor vehicles that could have been driven but would have been further damaged if so driven.
(2) Exclusions:
   i. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
   ii. Tire disablement without other damage even if no spare tire is available.
   iii. Headlight or taillight damage.
   iv. Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199,
219, 382, 653, and 654) in accordance with 49 CFR part 40.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full-time, regularly employed Commercial Motor Vehicle drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

Employer means an entity, *including a municipal employer*, employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this Federal regulation. The term, as used in this policy, refers to the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this policy and any applicable DOT agency regulations. Service agents are not employers for the purpose of Federal regulations.

Licensed Medical Practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other

drugs.

Negative Return-To-Duty Test means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02, as described in § 40.305.

Performing a Safety-Sensitive Function means a driver is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform any safety- sensitive functions.

Positive Alcohol Test means an alcohol test with an alcohol concentration of greater than or equal to 0.04.

Positive Rate for Random Drug Testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

Refuse to Submit (to an alcohol or controlled substances test) means that you as a driver:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (see §40.61(a))

(2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; Provided that an employee who does not provide a urine specimen because they have left the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;

(4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§40.67(l) and 40.69(g));

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));

(6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, Sec.40.197 (b))

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under Sec. 40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or

(8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).

(9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have

any type of prosthetic or other device that could be used to interfere with the collection process.
(10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
(11) Admit to the collector or MRO that you adulterated or substituted the specimen.
(12) For a breath alcohol test, refusing to sign the certification at Step 2 of the ATF 40.261 (a) (3).

(b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

(c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. 40.191

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
(2) All time inspecting servicing, or conditioning any commercial motor vehicle at any time;
(3) All time spent at the driving controls of a commercial motor vehicle in operation;
(4) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, using a vehicle for road clearing, snow removal, trash and recycling removal, remaining in readiness to operate the vehicle, and
(5) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening Test (or initial test) means:

(1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Service Agent means any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

Stand-Down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation Rate for Random Alcohol Testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

PREEMPTION OF STATE AND LOCAL LAWS *382.109*

(a) Except as provided in paragraph (b) of this section, the Federal regulation requiring this alcohol and controlled substances testing preempts any State or local law, rule, regulation, order to the extent that:
  (1) Compliance with both the State or local requirement and the Federal regulation is not possible; or
  (2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement of this Federal regulation.
(b) This policy, and the Federal regulation requiring it, shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, the Borough, or the general public.

OTHER REQUIREMENTS IMPOSED BY THE BOROUGH *382.111*

Except as expressly provided in this policy, nothing in the Federal regulation 382 and 49 CFR part 40 shall be construed to affect the authority of the Borough, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation. *Accordingly, the Borough may adopt, under its own authority, a Non-DOT drug and alcohol testing program.*

REQUIREMENT FOR NOTICE *382.113*

Before performing an alcohol or controlled substances test under the Federal regulation, the Borough shall notify a driver that the alcohol or controlled substances test is required by Federal regulation. The Borough shall not falsely represent that a test is administered under Federal regulation.

STARTING DATE FOR TESTING PROGRAMS *382.115*

(a) All domestic-domiciled employers must implement the requirements of this policy the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this policy on the date the employer begins commercial motor vehicle operations in the United States.

PUBLIC INTEREST EXCLUSION *382.117*

The Borough shall not use the services of a service agent who is subject to a public interest exclusion (PIE) in accordance with 49 CFR part 40, Subpart R. *This is a service agent who has been found by the DOT to be disqualified from providing services to DOT regulated employers.*

EMPLOYEE ADMISSION OF ALCOHOL AND CONTROLLED SUBSTANCE USE *382.121*

a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this policy and 49 CFR part 40, provided that:

1) The admission is in accordance with the Borough's written voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section;

(2)The driver does not self-identify in order to avoid testing under the requirements of this part;

2) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and

3) The driver does not perform a safety sensitive function until the Borough is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

b) A qualified voluntary self-identification program or policy must contain the following elements

1) It prohibits the Borough from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;

2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;

3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;

4) It must ensure that:

(i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or

(ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a

return to duty-controlled substance test with a verified negative test result for controlled substances use; and

5) It may incorporate employee monitoring and include non-DOT follow-up testing.

DRIVER IDENTIFICATION *382.123*

(a) For each alcohol test performed, the Borough shall provide the driver's commercial driver's license number and State of issuance in Step 1, Section B of the Alcohol Testing Form (ATF).

(b) For each controlled substance test performed under this part, the Borough shall provide the following information, which must be recorded as follows:

(i) The driver's commercial driver's license number and State of issuance in Step 1, section C of the Federal Drug Testing Custody and Control Form (CCF).

(ii) The employer's name and other identifying information required in Step 1, section A of the ATF.

EMPLOYEE ASSISTANCE PROGRAM

***The Borough's employee assistance program (EAP) is a confidential program designed to assist in the* identification and resolution of problems associated with employees impaired by alcohol or drugs, or other personal concerns that may adversely affect employee job performance**

Appendix A Section B

PROHIBITIONS

ALCOHOL CONCENTRATION *382.201*
No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If the Borough has actual knowledge that a driver has an alcohol concentration of
0.04 or greater, the driver will not be permitted to perform or continue to perform safety-sensitive functions.

ON-DUTY USE *382.205*
No driver shall use alcohol while performing safety-sensitive functions. If the Borough has actual knowledge that a driver is using alcohol while performing safety-sensitive functions, that driver shall not be permitted to perform or continue to perform safety-sensitive functions.

PRE-DUTY USE *382.207*
No driver shall perform safety-sensitive functions within four (4) hours after using alcohol. If the Borough has actual knowledge of a driver who has used alcohol within four (4) hours, that driver will not be permitted to perform or continue to perform safety-sensitive functions.

USE FOLLOWING AN ACCIDENT *382.209*
No driver required to take a post-accident alcohol test under 382.303 shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.

REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST *382.211*
No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under 382.303, a random alcohol or controlled substances test required under 382.305, a reasonable suspicion alcohol or controlled substances test required under 382.307, or a follow-up alcohol or controlled substances test required under 382.311. The Borough shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

DISCLOSURE OF OFF-DUTY DUI AND DRUG OFFENSE ARREST AN/OR CONVICTION 382.111
Safety Rule requiring mandatory reporting by Drivers of off – duty DUI and Drug Offense Arrest and/or Conviction. In accordance with the authority granted to the Borough by the DOT in 49 CFR 382.111 to imposed other requirements to prevent alcohol misuse by Drivers, it is mandatory that Drivers disclose to their supervisor by the end of the business day arrest and/or convictions for all alcohol and/or drug related offenses committed while operating any motor vehicle. This will allow the Borough to immediately remove from safety sensitive functions, Drivers who have engaged in off – duty unsafe behavior related to alcohol or drug misuse (which is directly related to their safety sensitive functions performed for the Borough) to make determinations as follows: 1) if the Driver is fit for duty; 2) if the Driver is still qualified under DOT regulations to operate a CMV for the Borough; 3) if the Driver is still insurable at standard rates under the Borough fleet policy; and 4) if the Driver can still meet the essential job functions for the position of Driver. It is an Essential Job Function of every DOT regulated Driver that they be qualified and licensed to operate a CMV without the use of a judicially ordered interlocking device, or similar device as part of a diversion or conviction for an alcohol related offence.

PRE-DUTY DISCLOSURE OF ANY IMPAIRING EFFECT MEDICATION OR SUBSTANCES *382.213*
(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) The Borough, having actual knowledge that a driver has used a controlled substance, shall not permit the driver to perform or continue to perform a safety-sensitive function.
(c) The Borough may require a driver to inform the Borough of any therapeutic drug use.

All drivers of the Borough are required, as a safety rule and under DOT regulations, to pre-duty disclosure that they are taking ANY impairing affect therapeutic drug, prescription medication (including medical marijuana), over-the-counter medication, mind altering synthetic or designer drugs or substances which may have an effect on their ability to safely operate a commercial motor vehicle or the performance of safety-sensitive duties. It is an essential function of every driver's position at the Borough to be able to work in a constant state of alertness and in a safe manner. If the fact that the driver is taking an impairing effect drug, medication or substance is not disclosed pre-duty by a driver, and the driver tests positive or is determined by the MRO to be a potential safety risk due to a drug, medication or substance, that driver shall be subject to discipline, up to and including termination for violation of this safety rule. If disclosure is made, the Borough, in accordance with its authority under 49 CFR Part 391.11(a), reserves the right to send the driver for a Fitness-for-Duty evaluation to evaluate the medication and its possible adverse effects on the driver's ability to safely operate a commercial motor vehicle or the performance of other safety-sensitive duties. In determining whether the employee has a legally valid prescription so as to constitute a legitimate medical explanation, consistent with the Controlled Substances Act (CSA), the MRO will use the CSA standard when conducting his medical review (49 CFR Part 40.137).

In advance of the operation of a commercial motor vehicle, or the performance of other safety-sensitive duties, or testing, drivers are strongly encouraged (and mandated by DOT Regulations) to have their own doctor make an individualized assessment of any safety related risks of the drug, medication or substance which they are taking, providing the doctor a copy of their job description or specific duties, and having the doctor render an opinion on the safety related risks. The driver need not disclose to their supervisor the drug, medication or substance, or the medical condition involved, to fulfill this pre-duty disclosure obligation of this safety policy, but may do so confidentially to the DER. All information provided shall be kept separate from personnel files and in a confidential manner by the DER. The MRO will make the final determination on the driver's ability to safely operate a commercial motor vehicle or the safety related risks of any particular drug, medication or substance, although the Borough shall make the final determination on whether the driver is qualified to drive/operate a commercial motor vehicle.

CONTROLLED SUBSTANCES TESTING *382.215*

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. The Borough, having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances, shall not permit the driver to perform or continue to perform safety-sensitive functions. In accordance with 49 CFR Part 40.171, when the MRO has notified the driver that they have a verified positive drug test and/or refusal to test because of adulteration or substitution, the driver has 72 hours from the time of notification to request a test of the split specimen.

EMPLOYER RESPONSIBILITIES *382.217*

No employer may allow, require, permit, or authorize a driver to operate a commercial motor vehicle during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of any of the following events:

(a) The driver receives a positive, adulterated, or substituted drug test result conducted under part 40;
(b) The driver receives an alcohol confirmation test result of 0.04 or higher alcohol concentration conducted under part 40;

(c) The driver refused to submit to a test for drugs or alcohol required under § 382; or
(d) The driver used alcohol prior to a post-accident alcohol test in violation of § 382.209.

CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B Any driver who engages in conduct prohibited by Section B of this policy shall be subject to disciplinary action up to and including termination.

Appendix A Section C

TESTS REQUIRED

TESTS REQUIRED

Required testing includes pre-employment (controlled substances required, alcohol at option of the Borough), post-accident, random, and reasonable suspicion. Return-to-duty and follow-up-testing is also required if the Borough allows a "positive" test employee to return to a safety-sensitive function after the required evaluation by a Substance Abuse Professional and the required rehabilitation.

THE BOROUGH RESERVES RIGHT TO CONDUCT NON-DOT DRUG AND ALCOHOL TESTING

In addition to drug and alcohol testing conducted by the Borough pursuant to 49 CFR Part 40 and 49 CFR Part 382, the Borough reserves the independent authority to screen and/or test employees under the Borough's Policy including, but not limited to, laboratory testing and point of collection test (POCT) devices utilizing alternative body specimens including hair, urine and oral fluid (saliva), for the detection of illegal drugs, prescription and over-the-counter medications or substances which have an impairing affect and/or alcohol, taken by those who are considered safety- sensitive employees, as may be permitted and/or restricted by applicable state or local laws or regulations and applicable collective bargaining agreements. The term "illegal use of drugs" includes any mind altering synthetic or designer drugs as well as any controlled or scheduled substance not used in accordance with a health care provider's lawful prescription for the user. These collections shall be performed in addition to, and not as a substitute for, DOT regulated tests and these urine specimens will not be poured from or taken from the same specimen collected for a DOT urine test or alcohol test [40.13] and will not be conducted using DOT forms [40.47, 40.227]. This may also include a "zero tolerance" policy for the use of drugs or alcohol.

PRE-EMPLOYMENT ***382.301***

(a) Prior to the first time a driver performs safety-sensitive functions for the Borough, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the Borough uses the exception in paragraph (b) of this section. The Borough shall not allow a driver, who the Borough intends to hire or use, to perform safety-sensitive functions unless the Borough has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver. *The Borough shall require a re-collection of a urine specimen on any pre-employment, return-to- duty and follow-up drug test if the result is negative-dilute. The MRO has authority to direct the re-collection be observed. If the second test result is also negative-dilute, the Borough shall accept the result as a negative test.*

(b) The Borough is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a controlled substances testing program that meets the requirements of this policy within the previous 30 days; and

(2) While participating in that program, either--

(i) Was tested for controlled substances within the past 6 months (from the date of application with the Borough), or

(ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the Borough); and

(3) The Borough ensures that no prior employer of the driver of whom the Borough has knowledge has records of a violation of this policy or the controlled substances use rule of another DOT agency within the previous six months.

(c) (1) If the Borough exercises the exception in paragraph (b) of this section, the Borough shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of Federal regulations.

(iv) Verification that the driver is qualified under the rules of this policy, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of Section B of this policy.

(2) If the Borough who uses but does not employ a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with 382.401. If the Borough cannot verify that the driver is participating in a controlled substances testing program in accordance with this policy and part 40 of Federal regulations, the Borough shall conduct a pre-employment-controlled substances test.

(d) The Borough may, but is not required to, conduct pre-employment alcohol testing under this policy. If the Borough chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre- employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of Federal regulation.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

POST-ACCIDENT *382.303*

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the Borough shall test for alcohol for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the Borough shall test for controlled substances for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and(b)(2) of this section:

Type of accident involved	Citation issued to the CMV driver	Test must be performed by the Borough
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

(d) (1) Alcohol tests. If a test required by this section is not administered within two hours following the accident, the Borough shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the Borough shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(2) Controlled substance tests. If a test required by this section is not administered within 32 hours following the accident, the Borough shall cease attempts to administer a controlled substances test and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the Borough to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(f) The Borough shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers shall be able to comply with the requirements of this section.

(g) (1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State, or local alcohol testing requirements, and that the results of the tests are obtained by the Borough.

(2) The results of 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 such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the Borough.

(h) Exception. This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 571.3) by the Borough unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 177.823.

RANDOM *382.305*

(a) The Borough shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b) (1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.
(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 25 percent of the average number of driver positions.

(c) (1) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.
(2) Each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.
(3) Each driver selected for testing shall be tested during the selection period.

(d) (1) To calculate the total number of covered drivers eligible for random testing throughout the year, the Borough, must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in the Borough's random testing pool, and all covered drivers must be in the random pool. If the Borough conducts random testing more often than once per month (e.g., daily, weekly, bi-weekly) the Borough does not need to compute this total number of covered drivers rate more than on a once per month basis.
(2) The Borough may use a service agent (e.g., a C/TPA) to perform random selections and covered drivers may be part of a larger random testing pool of covered employees. However, the Borough must ensure that the service agent is testing at the appropriate percentage established for FMCSA and that only covered employees are in the random testing pool.

(e) (1) The Borough shall ensure that random alcohol and controlled substances tests conducted under this policy are unannounced.
(2) The Borough shall ensure that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(f) The Borough shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the Borough shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(g) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(h) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the Borough, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(i) If the Borough is required to conduct random alcohol or controlled substances testing under the alcohol or

controlled substances testing rules of more than one DOT agency, the Borough may--

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the Borough is subject.

REASONABLE SUSPICION *382.307*

(a) The Borough shall require a driver to submit to an alcohol test when the Borough has reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning alcohol. The Borough's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) The Borough shall require a driver to submit to a controlled substances test when there is reasonable suspicion to believe that the driver has violated the prohibitions of Section B of this policy concerning controlled substances. The Borough's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must 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.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or an official of the Borough who is trained in accordance with 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver. *If the employee insists on driving, the proper local enforcement authority should be notified that an employee, who we believe may be under the influence of a drug or alcohol, is leaving the Borough premises driving a motor vehicle.*

(d) Alcohol testing is authorized by DOT/FMCSA regulations only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the workday that the driver is required to be in compliance with the Federal regulation. A driver may be directed by the Borough to only undergo reasonable suspicion alcohol testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e) (1) If an alcohol test required by DOT/FMCSA regulations is not administered within two (2) hours following the determination under paragraph (a) of this section, the Borough shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by DOT/FMCSA regulations is not administered within eight (8) hours following the determination under paragraph (a) of this section, the Borough shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under DOT/FMCSA regulations, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall the Borough permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty-four (24) hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this policy

concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, the Borough shall take no action under this policy against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit the Borough, with independent authority of DOT/FMCSA regulations from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or an official of the Borough who made the observations, with 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

RETURN-TO-DUTY *382.309*

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, Subpart O, including that such tests shall be collected under direct observation.

FOLLOW-UP *382.311*

The requirements for follow-up testing must be performed in accordance with 49 CFR part 40, Subpart O, including that such tests shall be collected under direct observation.

Appendix A Section D

HANDLING OF TEST RESULTS, RECORD RETENTION AND CONFIDENTIALITY

RETENTION OF RECORDS *382.401*

(a) General requirement. The Borough shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) Period of retention. The Borough shall maintain the records in accordance with the following schedule:

(1) *Five years*. The following records shall be maintained for a minimum of five years:
- (i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,
- (ii) Records of driver verified positive controlled substances test results,
- (iii) Documentation of refusals to take required alcohol and/or controlled substances tests,
- (iv) Driver evaluation and referrals,
- (v) Calibration documentation,
- (vi) Records related to the administration of the alcohol and controlled substances testing programs,
- (vii) Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations, and
- (viii) A copy of each annual calendar year summary required by 382.403.

(2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

(3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of Federal regulations) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) *Indefinite period*. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the Borough while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) Types of records. The following specific records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of Federal regulations and this policy. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:
- (i) Collection logbooks, if used,
- (ii) Documents relating to the random selection process,
- (iii) Calibration documentation for evidential breath testing devices,
- (iv) Documentation of breath alcohol technician training,
- (v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests,
- (vi) Documents generated in connection with decisions on post-accident tests,
- (vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing and
- (viii) A copy of each annual calendar year summary as required by 382.403.

(2) Records related to a driver's test results:
- (i) The Borough copy of the alcohol test form, including the results of the test,
- (ii) The Borough's copy of the controlled substances test chain of custody and control form,

(iii) Documents sent by the MRO to the Borough, including those required by part 40, Subpart G,

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this policy and

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this policy.

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the Borough:

(A) Must obtain in connection with the exception contained in 382.301 of this policy, and

(B) Must obtain as required by 382.413.

(3) Records related to other violations of this policy.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substances use awareness, including a copy of the Borough's policy on alcohol misuse and controlled substances use,

(ii) Documentation of compliance with requirements of 382.601, including the driver's signed receipt of education materials,

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by 40.213(a), and

(v) Certification that any training conducted under these Federal Regulations complies with requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, and consortia and/or with a C/TPA,

(ii) Names and positions of officials and their role in the Borough's alcohol and controlled substances testing program(s),

(iii) Semi-annual laboratory statistical summaries of urinalysis required by 40.111 (a) of Federal regulations and

(iv) The Borough's alcohol and controlled substances testing policy and procedures.

(d) Location of records. All records required by this policy shall be maintained as required by 390.31 and shall be made available for inspection at the Borough's principal place of business within two business days after a request has been made by an authorized representative of the FMCSA.

REPORTING OF RESULTS IN A MANAGEMENT INFORMATION SYSTEM *382.403*

(a) The Borough shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the Borough or any of its drivers.

(b) If the Borough is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the Borough's annual calendar year summary information, the Borough shall prepare and submit the report to the FMCSA by March 15 of that year. The Borough shall ensure that the annual summary

report is accurate and received by March 15 at the location that the FMCSA specifies in its request. ***Entity Name*** must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at Sec. 40.26 and appendix H to part 40). The Borough may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g.,electronic program transmitted via the Internet), other than hard copy, for MIS form submission. For information on the electronic version of the form, see: **http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm**.

You must use the form at appendix H to this part. You may also view and download the updated (1.01.2018) instructions at the DOT's website: (https://www.transportation.gov/odapc). You must submit the MIS report in accordance with rule requirements (e.g., dates for submission, selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. ***Entity Name*** shall ensure the accuracy and timeliness of each report submitted by the Borough or a consortium.

(d) If the Borough has a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the Borough), then that employee shall be counted only on the MIS report for the DOT agency under which they are randomly tested. Normally, this shall be the DOT agency under which the employee performs more than 50% of their duties. The Borough may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (e.g., Consortia/Third party administrator as defined in 49 CFR 382.107) may prepare the MIS report on behalf of the Borough. However, a Borough official (e.g., Designated employer representative) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

ACCESS TO FACILITIES AND RECORDS *382.405*

(a) Except as required by law or expressly authorized or required, the Borough shall not release driver information that is contained in records required to be maintained under 382.401.

(b) A driver is 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/her alcohol or controlled substances tests. The Borough will promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) The Borough shall permit access to all facilities utilized in complying with the requirements of this policy to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the Borough or any of its drivers.

(e) The Borough and each service agent who maintains records for an employer, must make available copies of all results for DOT alcohol and/or controlled substances testing conducted by the Borough and any other information pertaining to the Borough's alcohol misuse and/or controlled substances use prevention program when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the Borough or any of its drivers.

(e) When requested by the National Transportation Safety Board as a part of a crash investigation:

(i) The Borough must disclose information related to the Borough's administration of a post-accident alcohol and/or a controlled substances test administered following the crash under investigation; and

(ii) FMCSA will provide access to information in the Clearinghouse (once established) concerning drivers who are involved with the crash under investigation.

(f) When requested by the National Transportation Safety Board as part of an accident investigation, the Borough shall disclose information related to the Borough's administration of a post-accident alcohol and/or controlled substances test administered following the accident under investigation.

(g) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(h) The Borough may disclose information required to be maintained under this policy pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this policy (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought).

(i) The Borough shall release information regarding a driver's records as directed by the specific written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent as outlined in 49 CFR part 40.321(b).

MEDICAL REVIEW OFFICER NOTIFICATIONS TO THE BOROUGH *382.407*

The medical review officer shall report the results of controlled substances tests to the Borough in accordance with the requirements of 49 CFR part 40, Subpart G.

MEDICAL REVIEW OFFICER RECORD RETENTION FOR CONTROLLED SUBSTANCES *382.409*

(a) A medical review officer or third-party administrator shall maintain all dated records and notifications, identified by individuals, for a minimum of five (5) years for verified positive controlled substances test results.

(b) A medical review officer or third-party administrator shall maintain all dated records and notifications, identified by individual, for a minimum or one (1) year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer (MRO as defined in § 40.3) or a consortium/third party administrator (C/TPA as defined in 382.107), and no MRO or C/TPA may release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a MRO or a C/TPA from releasing to the employer, the Clearinghouse (once established), or to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances and alcohol testing program under this part, the information delineated in part 40, subpart G.

EMPLOYER NOTIFICATIONS *382.411*

(a) The Borough shall notify a driver of the results of a pre-employment-controlled substances test conducted under this policy, if the driver applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The Borough shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this policy if the test results are verified positive. The Borough shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated employer representative (DER) shall make reasonable efforts to contact and request each driver who submitted a specimen under this policy, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated employer representative (DER) shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.

INQUIRIES FOR ALCOHOL AND CONTROLLED SUBSTANCES INFORMATION FROM PREVIOUS EMPLOYERS *382.413*

(a) The Borough must request alcohol and controlled substances information from previous employers in accordance with the requirements of § 40.25, except that the Borough must request information from all DOT-regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years.

(b) As of January 6, 2023, employers must use the Drug and Alcohol Clearinghouse in accordance with § 382.701(a) to comply with the requirements of § 40.25 of this title with respect to FMCSA-regulated employers. **Exception**: When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the previous employer's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5).

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the Borough must request the alcohol and controlled substances information required under this section and § 40.25 directly from those employers regulated by a DOT Agency other than FMCSA.

NOTIFICATION TO EMPLOYERS OF A CONTROLLED SUBSTANCES OR ALCOHOL TESTING PROGRAM VIOLATION *382.415*

Each person holding a commercial driver's license and subject to the DOT controlled substances and alcohol testing requirements under § 382 who has violated the alcohol and controlled substances prohibitions under part 40 or under § 382 without complying with the requirements of part 40, subpart O, must notify in writing all current employers of such violation(s). The driver is not required to provide notification to the employer that administered the test or documented the circumstances that gave rise to the violation. The notification must be made before the end of the business day following the day the employee received notice of the violation, or prior to performing any safety-sensitive function, whichever comes first.

Appendix A Section E

CONSEQUENCES FOR DRIVERS ENGAGING IN SUBSTANCE USE- RELATED CONDUCT

REMOVAL FROM SAFETY-SENSITIVE FUNCTION *382.501*

(a) Except as provided in Section F of this policy, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by Section B of this policy or an alcohol or any controlled substances rule of another DOT agency.

(b) The Borough shall not permit to perform safety-sensitive functions, including driving a commercial motor vehicle, if the Borough has determined that the driver has violated this policy.

(c) For the purposes of DOT/FMCSA regulations, commercial motor vehicle means a commercial motor vehicle in commerce as defined in 382.107 and a commercial motor vehicle in interstate commerce as defined in part 390.

REQUIRED EVALUATION AND TESTING *382.503*

No driver who has engaged in conduct prohibited by Section B of this policy shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O. The Borough shall not permit a driver who has engaged in conduct prohibited by Section B of this policy to perform safety- sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR part 40, Subpart O.

OTHER ALCOHOL-RELATED CONDUCT *382.505*

(a) No driver tested under the provisions of Section C of this policy who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for the Borough, including driving a commercial motor vehicle, nor shall the Borough permit the driver to perform or continue to perform safety- sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, the Borough shall not take any action under this policy against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit the Borough with authority independent of this policy from taking any action otherwise consistent with law.

The use or possession of alcoholic beverages while on the Borough's property, or in any of the Borough's vehicle, or on the Borough's time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.

Employees who are not at work, but who could be called out are expected to be fit for duty upon reporting for work. If an employee is under the influence of alcohol, the employee must notify the Borough's personnel when contacted. Failure to advise the Borough of alcohol consumption may result in disciplinary action. If a covered employee is perceived to be under the influence of alcohol when reporting to work after being called in, the employee's supervisor must be notified.

The supervisor must objectively observe the employee's behavior and if possible, substantiate the behavior with a second supervisor. Supervisors must have received training in alcohol and/or substance abuse detection. The supervisor must follow procedures outlined in the policy. If a determination to test for reasonable suspicion is made, the employee is immediately removed from safety-sensitive duties and the DER is contacted.

PENALTIES 382.507

The Borough and/or driver who violates the FMCSA requirements of § 382 and/or 49 CFR part 40 shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. Section 521(b).

Appendix A Section F

ALCOHOL MISUSE AND CONTROLLED SUBSTANCES USE INFORMATION, TRAINING, AND REFERRAL

THE BOROUGH'S OBLIGATION TO PROMULGATE A POLICY ON THE MISUSE OF ALCOHOL AND USE OF CONTROLLED SUBSTANCES. *382.601*

(a) *General requirements.* The Borough shall provide educational materials that explain the requirements of this policy and the Borough's policies and procedures with respect to meeting the FMCSA alcohol and drug testing requirements.

(1) The Borough shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) The Borough shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the Borough to answer driver questions about the materials; *(COVERED EMPLOYEE CERTIFICATE OF RECEIPT)*

(2) The categories of drivers who are subject to the provisions of this policy; *(APPLICABILITY)*

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the workday the driver is required to be in compliance with the policy; *(PERIOD OF THE WORK DAY A DRIVER IS REQUIRED TO BE IN COMPLIANCE)*

(4) Specific information concerning driver conduct that is prohibited by this policy; *(SECTION B - PROHIBITIONS)*

(5) The circumstances under which a driver shall be tested for alcohol and/or controlled substances under this policy including post-accident testing under 382.303(d); *(SECTION C - TESTS REQUIRED)*

(6) The procedures that shall be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by 382.303(d); *(49 CFR part 40)*

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this policy; *(REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST)*

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences; *(DEFINITIONS)*

(9) The consequences for drivers found to have violated Section B of this policy, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under 49 CFR part 40, Subpart O; *(CERTIFICATE OF RECEIPT, CONSEQUENCES OF*

PROHIBITED CONDUCT; and CONSEQUENCES OF CONDUCT PROHIBITED BY SECTION B, and SECTION E)

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less that 0.04; *(OTHER ALCOHOL-RELATED CONDUCT 382.505)*

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

(c) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse (once established):

(1) A verified positive, adulterated, or substituted drug test result;
(2) An alcohol confirmation test with a concentration of 0.04 or higher;
(3) A refusal to submit to any test required by subpart C;
(4) An employer's report of actual knowledge, as defined at § 382.107:
(5) On-duty alcohol use pursuant to § 382.205;
(6) Pre-duty alcohol use pursuant to § 382.207;
(7) Alcohol use following an accident pursuant to § 382.209; and
(8) Controlled substance use pursuant to § 382.213;
(9) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
(10) A negative return-to-duty test; and
(11) An employer's report of completion of follow-up testing.

(d) *Optional provision.* The materials supplied to drivers may also include information on the Borough's additional policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the Borough's authority independent of Federal regulation. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(e) *Certificate of receipt.* The Borough shall ensure that each driver is required to sign a statement certifying that he/she has received a copy of these materials described in this section. The Borough shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

TRAINING FOR SUPERVISORS *382.603*

The Borough shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training shall be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

REFERRAL, EVALUATION, AND TREATMENT *382.605*

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

Appendix A Section G

REQUIREMENTS AND PROCEDURES FOR IMPLEMENTATION OF THE COMMERCIAL DRIVER'S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE

The purpose of the Borough Policy updates in advance of the Compliance Date of January 6, 2020, as mandated by § 382.601:

1) is part of the Borough's efforts to meet its Employer Obligation to Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substance.

2) to publish educational materials to drivers about the Clearinghouse and other regulatory changes contained in the Final Rule issued December 5, 2016; and

3) to notify drivers that drug, and alcohol test information shall be reported to the Clearinghouse beginning January 6, 2020, so as to encourage drivers to seek substance abuse treatment if they currently have a problem with the misuse of alcohol and/or use of controlled substance(s).

DRUG AND ALCOHOL CLEARINGHOUSE *382.701*

(a) **Pre-employment query required**.

(1) Employers must not employ a driver subject to controlled substances and alcohol testing to perform a safety- sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance, in violation of § 382.213.

(2) The Borough must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

(b) **Annual query required**.

(1) The Borough must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under 382, to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of 382.701, the Borough may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the Borough whether there is information about the individual driver in the Clearinghouse but will not release that information to the Borough. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of 382.701, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of 382.701.

(4) **Employer notification.** If any information described in paragraph (a) of 382.701 is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

(c) **Prohibition.** No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined in § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in violation of § 382.213, except where a query of the Clearinghouse demonstrates:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.

(2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with § 40.307 and specified in the SAP report required by § 40.311, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

(f) **Recordkeeping required.** Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

DRIVER CONSENT TO PERMIT ACCESS TO INFORMATION IN THE CLEARINGHOUSE *382.703*

(a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

(b) Before the Borough may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:

(1) A verified positive, adulterated, or substituted controlled substances test result;
(2) An alcohol confirmation test with a concentration of 0.04 or higher;
(3) A refusal to submit to a test in violation of § 382.211;
(4) An employer's report of actual knowledge, as defined at § 382.107, of:
  (i) On duty alcohol use pursuant to § 382.205;
  (ii) Pre-duty alcohol use pursuant to § 382.207;
  (iii) Alcohol use following an accident pursuant to § 382.209; and
  (iv) Controlled substance use pursuant to § 382.213;
(5) A SAP report of the successful completion of the return-to-duty process;
(6) A negative return-to-duty test; and
(7) An employer's report of completion of follow-up testing.

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of 382.703.

(d) A driver granting consent under 382.703 must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with § 382.701(a)(2) or (b)(3).

(e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with § 382.701(c).

REPORTING TO THE CLEARINGHOUSE *382.705*

(a) MROs.

(1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:

(i) Verified positive, adulterated, or substituted controlled substances test results;

(ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).

(2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:

(i) Reason for the test;
(ii) Federal Drug Testing Custody and Control Form specimen ID number;
(iii) Driver's name, date of birth, and CDL number and State of issuance;
(iv) Employer's name, address, and USDOT number, if applicable;
(v) Date of the test;
(vi) Date of the verified result; and
(vii) Test result. The test result must be one of the following:
(A) Positive (including the controlled substance(s) identified);
(B) Refusal to test: adulterated;
(C) Refusal to test: substituted; or
(D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with § 40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

(b) Employers.

(1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:

(i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
(ii) A negative return-to-duty test result;
(iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;
(iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and
(v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title.

(2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:
(i) Reason for the test;
(ii) Driver's name, date of birth, and CDL number and State of issuance;
(iii) Employer name, address, and USDOT number;

(iv) Date of the test;
(v) Date the result was reported; and
(vi) *Test result*. The test result must be one of the following:
(A) Negative (only required for return-to-duty tests administered in accordance with § 382.309);
(B) Positive; or
(C) Refusal to take a test.

(3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:
(i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
(ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
(iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and
(iii) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.

(4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at § 382.107, of:

(i) On-duty alcohol use pursuant to § 382.205;
(ii) Pre-duty alcohol use pursuant to § 382.207;
(iii) Alcohol use following an accident pursuant to § 382.209; and
(iv) Controlled substance use pursuant to § 382.213.
(5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:
(i) Driver's name, date of birth, CDL number and State of issuance;
(ii) Employer name, address, and USDOT number, if applicable;
(iii) Date the employer obtained actual knowledge of the violation;
(iv) Witnesses to the violation, if any, including contact information;
(v) Description of the violation;
(vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to § 382.121), correspondence, or other documentation; and
(vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.

(6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to their own alcohol and controlled substances use.

(c) *C/TPAs*. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this

section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: an employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of 382.705.

SAPs.

(1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:

(i) SAPs name, address, and telephone number;
(ii) Driver's name, date of birth, and CDL number and State of issuance;
(iii) Date of the initial substance-abuse-professional assessment; and
(iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under 382.

(2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment and must report the information required by paragraph (d)(1)(iv) of 382.703 by the close of the business day following the determination that the driver has completed the return-to-duty process.

(d) *Reporting truthfully and accurately*. Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information they know or should know is false or inaccurate.

Reporting Entities and Circumstances	
Reporting Entity	**When Information Shall be Reported to Clearinghouse**
Prospective/Current Employer of CDL Driver	– An alcohol confirmation test with a concentration of 0.04 or higher – Refusal to test (alcohol) as specified in 49 CFR 40.261 – Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 – Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. – Negative return-to-duty test results (drug and alcohol testing, as applicable) – Completion of follow-up testing
Service Agent acting on behalf of Current Employer of CDL Driver	– An alcohol confirmation test with a concentration of 0.04 or higher – Refusal to test (alcohol) as specified in 49 CFR 40.261 – Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 – Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. – Negative return-to-duty test results (drug and alcohol testing, as applicable) – Completion of follow-up testing
MRO	– Verified positive, adulterated, or substituted drug test result. – Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191
SAP	— Identification of driver and date the initial assessment was initiated — Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing

NOTICE TO DRIVERS OF ENTRY, REVISION, REMOVAL, OR RELEASE OF INFORMATION *382.707*

(a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.

(b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.

(c) Drivers shall be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

DRIVERS' ACCESS TO INFORMATION IN THE CLEARINGHOUSE *382.709*

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing their information.

CLEARINGHOUSE REGISTRATION *382.711*

(a) *Clearinghouse registration required*. Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.

(b) Employers.

(1) Employer Clearinghouse registration must include:

(i) Name, address, and telephone number;

(ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and

(iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate their identity.

(2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.

(3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse. Employers must update any changes to this information within 10 days.

(c) MROs and SAPs. Each MRO or SAP must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;

(2) A certification that the applicant's access to the Clearinghouse is conditioned on their compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and

(3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) C/TPAs and other service agents. Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and

(2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.

(3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) f 382.711 annually.

DURATION, CANCELLATION, AND REVOCATION OF ACCESS *382.713*

(a) *Term*. Clearinghouse registration is valid for 5 years, unless cancelled or revoked.

(b) *Cancellation.* FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.

(c) *Revocation*. FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

AUTHORIZATION TO ENTER INFORMATION INTO THE CLEARINGHOUSE *382.717*

(a) *C/TPAs*. No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.

(b) *SAPs*. A driver must designate a SAP before SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

PROCEDURES FOR CORRECTING INFORMATION IN THE DATABASE 382.17

(a) Petitions limited to inaccurately reported information.

(1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.

(2) Exceptions.

(i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

(ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in § 382.705(b)(5).

(iv) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in § 382.705(b)(3).

(b) Petition. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:

(1) The petitioner's name, address, telephone number, and CDL number and State of issuance;

(2) Detailed description of the basis for the allegation that the information is not accurate; and

(3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(c) Submission of petition. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention:

Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE, Washington, D.C. 20590.

(d) Notice of decision. Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.

(e) Request for expedited treatment.

(1) A driver may request expedited treatment to correct inaccurate information in their Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety- sensitive functions. This request may be included in the original petition or as a separate document.

(2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.

Administrative review.

(3) A driver may request FMCSA to conduct an administrative review if they believe that a decision made in accordance with paragraph (d) or (e) of this section was in error.

(4) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

(5) The driver's request must explain the error they believe FMCSA committed and provide information and/or documents to support their argument.

(6) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

(f) *Subsequent notification to employers*. When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

AVAILABILITY AND REMOVAL OF INFORMATION *382.719*

(a) Driver information not available. Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all the following conditions relating to the violation are satisfied:

(1) The SAP reports to the Clearinghouse the information required in § 382.705(d);

(2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;

(3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title; and

(4) Five years have passed since the date of the violation determination.

(b) Driver information remains available. Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) *Exceptions*.

(1) Within 2 business days of granting a request for removal pursuant to § 382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.

(2) Information about a particular driver's drug or alcohol violation may be removed in accordance with § 382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) *Driver information remains available*. Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

FEES *382.721*

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. ***Exception***: No driver may be required to pay a fee to access their own information in the Clearinghouse.

UNAUTHORIZED ACCESS OR USE PROHIBITED *382.723*

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity no directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.

c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at § 382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

ACCESS BY STATE LICENSING AUTHORITIES *382.725*

(a) In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(c) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(d) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(e) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of their right of access under this section.

PENALTIES *382.727*

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

(e) (4) As of January 6, 2023, employers subject to § 382.701(a) of § 382 must use the Drug and Alcohol Clearinghouse to comply with the requirements of this section with respect to FMCSA-regulated employers.

(i) *Exceptions*.

(A) If an applicant who is subject to follow-up testing has not successfully completed all follow- up tests, the employer must request the applicant's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5) of Part 40.

(B) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT mode other than FMCSA, the employer must request alcohol and controlled substances information required under this section directly from those employers regulated by a DOT mode other than FMCSA.

(ii) [*Reserved*]

(f) (1) A prospective motor carrier employer must provide to the previous employer the driver's consent meeting the requirements of § 40.321(b) of Part 40 for the release of the information in paragraph (e) of 391.23. If the driver refuses to provide this consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(2) If a driver refuses to grant consent for the prospective motor carrier employer to query the Drug and Alcohol Clearinghouse in accordance with paragraph (e)(4) of 391.23, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle.

Borough of Mendham Commercial Motor Vehicle Driver's Certificate of Compliance with USDOT Cell-Phone/Texting Bans

It is understood that the information in Attachment A is being provided to the employee in an effort by the Borough to show good faith in their efforts to achieve compliance with the cited Federal regulations. (49 CFR § 386.81)

MOTOR CARRIERS FEDERAL MOTOR CARIER SAFETY REGULATIONS (49 CFR 392):

- The restrictions in 49 CFR Part 392 on using a mobile telephone or texting while driving apply to every operator of a "commercial motor vehicle" as defined in Section 390.5, including interstate vehicles weighing or rated at 10,001 pounds or more, vehicles placarded for hazardous materials, and certain vehicles designed or used for more than 8 passengers (including the driver).
- In-state operations of vehicles placarded for hazardous materials are also subject to the restrictions.
- Other in-state-only operations may also be subject, depending on state rules.

DRIVERS FEDERAL MOTOR CARIER SAFETY REGULATIONS (49 CFR 392):

- Part 392 of the Federal Motor Carrier Safety Regulations contains restrictions on texting and the use of hand-held mobile telephones while driving a commercial motor vehicle (CMV), including the following:
- **Texting ban (49 CFR 392.80):**
    - Employees may not manually enter text into or read text from an electronic device while driving a CMV.
    - This includes e-mailing, text messaging, using the internet, pressing more than one button to start or end a phone call, or any other form of text retrieval or entry for communication purposes.
- **Hand-held cell-phone ban (49 CFR 392.82):**
    - Employees are prohibited from using a hand-held cell phone while driving a CMV.
    - This includes talking on a phone while holding it in your hand (including push-to-talk), pressing more than a single button to dial or answer a cell phone, or leaving your normal seated driving position to reach for a cell phone.

PENALTIES (386 CFR 383.51, 391.15, 49)

- CDL and non-CDL drivers can be disqualified for 60 up to 120 days and/or face Federal fines of up to $2,750 for each violation. The Borough can be fined up to $11,000 for each violation.

HANDS FREE DEVICES

- ***Except as prohibited under the Borough policy,***-employees are allowed to use a hands-free phone, a CB radio, a navigation system, a two-way radio, a music player, or a fleet management system for purposes other than texting.

TEXTING AND HAND-HELD CELL-PHONE USE

- Texting and hand-held cell phone use is **only allowed** if an employee needs to contact emergency services or if the employee has stopped in a safe location off the road.

Employee Name	**Title**
Employee Signature	**Date**