

**DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES  
Bureau of Human Resources**

June 26, 2012

**HUMAN RESOURCES MEMORANDUM 2-12**

TO: All Agency Heads, Agency Human Resource/EEO Representatives

SUBJECT: Drug And Alcohol Testing Policy For Employees In Positions Requiring A  
Commercial Driver's License (CDL) And Defined As Safety-Sensitive

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Attached is the updated (March 2012) drug and alcohol testing policy for employees in positions requiring a commercial driver's license (CDL) and defined as safety-sensitive.

Please post as necessary.

***s/ Joyce A. Oreskovich***

Joyce A. Oreskovich, Director  
Bureau of Human Resources

Attachment

# **DRUG AND ALCOHOL TESTING POLICY FOR EMPLOYEES IN POSITIONS REQUIRING A COMMERCIAL DRIVER'S LICENSE (CDL) AND DEFINED AS SAFETY-SENSITIVE**

Effective January 1, 1995

Major Revision #1, March, 2012

## **I. PURPOSE**

The purpose of this memorandum is to outline the State of Maine's policy regarding federal law and rules governing drug and alcohol testing for employees in safety sensitive jobs.

As an employer, the State of Maine maintains a strong commitment to provide a safe, efficient work environment for its employees and the public they serve. This policy is based upon the State's practice and policy prohibiting the use of alcohol and drugs on the job or prior to reporting to work. The policy is consistent with the Federal Drug Free Workplace Act of 1989, the State of Maine's Drug Free Workplace Policy of March 10, 1989, the Substance Abuse Testing Law (26 MRSA, CH. 7, Sub-chapter III-A) and the Omnibus Transportation Employee Testing Act (OTETA). It is the intent of this policy to assure compliance with Federal and State law and regulations regarding drug and alcohol testing of employees.

As a result of enactment of OTETA, the Federal Highway Administration (FHWA) instituted rules that mandate alcohol and drug testing for employees in positions requiring a Commercial Drivers License (CDL) and defined as safety sensitive. Employees in positions requiring a Commercial Drivers License (CDL) and defined as safety sensitive are subject to this policy and hereafter in this policy will be referred to as employee and/or employees. These rules, which become effective January 1, 1995, require pre-employment, reasonable suspicion, post-accident, random, follow-up, and return to duty drug and alcohol testing.

## **II. PROGRAM REQUIREMENTS**

### **A. Employees Subject to Testing**

FHWA rules provide that safety sensitive employees who operate vehicles requiring a CDL must be subject to drug and alcohol testing. A CDL is required of any person who operates a motor vehicle defined as: a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle -

- 1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;  
or

- 2) Has a gross vehicle weight rating of 26,001 or more pounds; 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 purpose of the Hazardous Materials Transportation Act.

Examples of positions deemed to require a CDL include bus drivers, drivers of trucks over 26,000 GVWR, and snowplow drivers.

Each department shall identify a complete listing of the safety-sensitive job functions and corresponding position titles located in the respective organizations. That listing shall be attached to this policy memorandum and shall be updated as necessary.

### **B. Participation as a Condition of Employment**

All employees in, or applicants for, positions defined as safety-sensitive in Section 11, A above must participate in the drug and alcohol testing program prescribed by FHWA rules as a condition of employment. **Failure to participate and comply with program requirements may result in disciplinary action up to and including termination of employment.**

### **C. Prohibited Behavior**

It is the policy of the State of Maine that-

- 1) No employee shall use, sell, distribute, dispense, possess, or manufacture any alcoholic beverages or illegal drugs or any other intoxicating substance on a job site, or State property while on duty; or while in a State vehicle, a vehicle leased for State business, or a privately owned vehicle being used for State business during the employee's work hours.
- 2) No employee shall report to work unfit for duty at the beginning of a shift or upon returning from any break, lunch or rest period, as a result of consuming alcohol, illegal drugs, or other intoxicant. Further, no employee notified of being in a safety-sensitive position as defined by the Omnibus Transportation Act of 1991 and FHWA rules shall report to work in a condition that violates that Act and the corresponding rules.
- 3) Effective January 1, 1995, an employee in a safety-sensitive position is further prohibited from the use of alcohol four (4) hours prior to performing safety-sensitive functions. No supervisor having knowledge that an employee in such a position has used alcohol within four (4) hours shall permit that employee to perform safety-sensitive functions.

- 4) In some cases, the use of prescription medication, over-the-counter medication or prescribed medical marijuana may cause impairment which prohibits the employee from performing safety-sensitive functions. It is the responsibility of an employee on prescription medication, over-the-counter medication or prescribed medical marijuana which may impair performance to consult with his/her physician or pharmacist regarding its effects on their ability to perform safety-sensitive functions. When using prescription, over-the-counter medication or medical marijuana, it is the responsibility of the employee to inform their department's Equal Employment Opportunity Coordinator if he/she may be impaired. An employee may be required to have his/her physician certify that medication does/does not adversely affect the employee's fitness for duty.
- 5) Federal rules governing safety-sensitive positions determine the provisions of drug and alcohol testing related to accidents. Further, for employees in non safety-sensitive positions, any work-related accident or injury involving State vehicles, equipment or property where it can be demonstrated that the use of alcohol, drugs, or other intoxicants was a contributing factor, **may result in disciplinary action up to and including termination of employment.**
- 6) Violation of these rules may result in disciplinary action up to and including termination of employment.

#### **D. Circumstances for Testing**

FHWA rules require that drug and alcohol tests be given to safety-sensitive employees in specific circumstances: pre-employment, reasonable suspicion, post-accident, random, return to duty, and follow-up. In order for employees to recognize the circumstances which may initiate these tests, the following definitions are provided:

- 1) **Pre-employment Testing** - The FHWA rules require that all applicants for employment in positions requiring a CDL or individuals being transferred into such positions must be given pre-employment drug and alcohol tests. Applicants may not be hired or assigned to a safety-sensitive function unless they complete and pass the tests. Prior to conducting the tests, departments must inform the applicant or employee of the testing requirements. Vacancy announcements and job postings must stipulate that passing drug and alcohol tests is a condition of employment. Further, applicants may be required to sign a document acknowledging that they know they are subject to testing.
- 2) **Reasonable Suspicion Testing** - The FHWA rules require that an employee in a safety-sensitive position must be directed to undergo alcohol or drug

testing when the supervisor has reasonable suspicion to believe that the employee has used a prohibited drug or has misused alcohol in violation of OTETA and FHWA regulations. The request to undergo a reasonable suspicion test must be based on specific, contemporaneous, articulable, reliable observations concerning the appearance, behavior, speech, or body odor of the employee.

- 3) **Post-Accident Testing** - The FHWA rules provide that as soon as practicable following an accident, tests for alcohol and controlled substances shall be administered to employees performing safety-sensitive functions, if the accident involved the loss of human life or the driver receives a citation under State or local law for a moving traffic violation arising from the accident. Drug tests must be performed within thirty-two (32) hours following the accident. Alcohol tests must be performed within eight (8) hours. If an alcohol test is not administered within two (2) hours following the accident, the department must still attempt to administer the test, and must also prepare and maintain a record stating the reason(s) the test was not promptly administered. If an alcohol test is still not administered within eight (8) hours following the accident, the department shall cease attempts to administer an alcohol test and shall maintain the same record.

A safety-sensitive employee shall not use alcohol for eight (8) hours following an accident or until the employee undergoes a post-accident alcohol test, whichever occurs first.

The requirement to test for alcohol and drugs following an accident shall in no way delay necessary medical attention for injured people or prohibit a safety-sensitive employee from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care. However, an employee who is subject to post accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing.

- 4) **Random Testing** - The FHWA rules require that safety-sensitive employees be subject to random drug and alcohol testing. The selection of employees for random alcohol and drug testing shall be made by a scientifically valid random number selection method. The selection process shall assure that each employee shall have an equal chance of being testing each time selections are made. Selection shall be determined by the third-party organization employed to administer the alcohol and drug testing program.

The test dates shall be spread reasonably throughout the year with no established pattern. Testing will be unannounced as well as random.

Once the employee has been notified that he/she has been selected for random testing, the employee shall report immediately to the collection

site. Employees shall be individually and discretely notified to report to the collection site and they shall be assured that they have been selected for a routine test. Schedules shall be adjusted so that additional personnel may be available to substitute for employees being testing.

- 5) **Return to Duty Testing** - Before any employee is allowed to return to duty to perform a safety-sensitive function following a verified drug test result, an alcohol result of 0.04 or greater, or a refusal to submit to a test, that employee must undergo a return-to-duty test. The return-to-duty alcohol test result must indicate an alcohol concentration of less than 0.02. The return-to-duty drug test result must indicate a verified negative result for controlled substance use.

Before a return to duty test is performed, the employee must be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee may need and shall determine whether the employee has followed recommendations by a substance abuse professional (SAP) including participation in any rehabilitation program.

FHWA rules require that all Return To Duty tests be conducted under direct observation.

- 6) **Follow-up Testing** - Once allowed to return to duty, an employee shall be subject to unannounced follow-up testing for at least twelve (12), but not more than sixty (60) months. The frequency and duration of the follow-up testing will be recommended by a substance abuse professional (SAP) as long as a minimum of six (6) tests are performed during the first twelve (12) months after the employee has returned to duty. Employees subject to follow-up testing must also remain in the standard random pool.

FHWA rules require that all Follow-Up tests be conducted under direct observation.

#### **E. Behavior that Constitutes a Refusal to Submit to a Test**

The following actions or behaviors shall constitute a refusal to submit to a required test:

- 1) Refusal to take the test.
- 2) Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation.
- 3) Tampering with or attempting to adulterate the specimen or collection procedure.

- 4) Failure to report to the collection site in the time allotted.
- 5) Failure to remain readily available for post-accident testing for eight (8) hours or until the employee undergoes testing, whichever occurs first.

#### **F. Testing Procedures**

- 1) **Drug Testing** - Drug testing is conducted by analyzing the employee's urine specimen. Specimens are collected in an off-site facility which must meet the "Procedures for Transportation Drug and Alcohol Testing Program" (49 CFR, Part 40) requirements to assure privacy and the integrity of specimen collection. The employee provides a urine specimen, which is sealed and labeled by an authorized agent of the testing organization. A chain of custody document is completed and the specimen is shipped to a certified laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification, and integrity are not compromised.

The OTETA requires that drug testing procedures for safety sensitive employees include split specimen techniques. Each urine specimen is sub-divided into two containers labeled as primary and split specimens. Both specimens are forwarded to a laboratory certified by the U.S. Department of Health and Human Services (DHHS). Only the primary specimen is used in the urinalysis. The split specimen remains sealed and stored unless, and until, it is required for confirmation of a positive test.

An initial screening test is performed. If the test is positive for one or more drugs, a confirmation test is performed for each identified drug using gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications are not reported as positive results.

If the analysis of the primary specimen confirms the presence of controlled substances, the employee has seventy-two (72) hours to request that the split specimen be sent to another DHHS certified laboratory for analysis. The split specimen procedures provides the employee with an opportunity for a second opinion.

All drug test results are reviewed and interpreted by a physician, Medical Review Officer (MRO), before they are reported. If the laboratory reports a positive result to the MRO, the MRO contacts the employee and conducts an interview to determine if there is an alternative medical explanation for the presence of a controlled substance in the specimen.

If the employee provides appropriate documentation and the MRO determines that there is a legitimate medical use of the prohibited drug, the test result is reported as negative.

Urine specimens are analyzed for the following drugs:

- Marijuana (THC metabolite)
- Cocaine
- Amphetamines
- Opiates (including heroin)
- Phencyclidine (PCP)

- 2) **Alcohol Testing** - FHWA rules provide that alcohol testing is conducted using evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration (NHTSA). The breath test must be performed by a breath alcohol technician (BAT) trained in the operation of the EBT and in the alcohol testing procedures prescribed by the rules.

Two breath tests are required to determine if a person has a prohibited alcohol concentration. Any result from the screening test is considered negative if the alcohol concentration is less than 0.02. If the alcohol concentration is 0.02 or greater, a confirmation test must be conducted. The employee and the BAT complete the alcohol testing form to ensure that results are properly recorded. The confirmation test must be conducted using an EBT that prints the results, date, time, in sequential test numbers, and, the name and serial number of the EBT to ensure the reliability of the results.

The EBT shall be conducted by BAT's employed by a drug and alcohol testing organization under contract by the State of Maine. Agents of the State of Maine or any of its departments shall not perform the breath alcohol test. Law enforcement officers will not conduct the tests as part of roadside inspections. Under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable.

- 3) **Confidentiality of Test Results** - Employee alcohol and drug testing results and records are maintained under strict confidentiality by the State of Maine, the drug testing laboratory, the alcohol testing facility, and the medical review officer. The results cannot be released to any other party except a substance abuse professional without the written consent of the employee.

Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation, or administrative proceedings arising from a positive drug test or other violation of these rules.

Statistical records and reports are maintained by the State of Maine and the alcohol and drug testing provider. This information is aggregate data and is used only to monitor compliance with the FHWA rules.

### G. Consequences of the Use of Drugs and the Misuse of Alcohol

- 1) Consequences of Alcohol Misuse - Employees who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. The following circumstances constitute prohibited behaviors.
  - a. Employee has an alcohol concentration of 0.02 or greater, but less than 0.04, as determined by EBT results, when tested just before, during or just after performing safety-sensitive functions.
  - b. Employee has used alcohol within four (4) hours of performing safety-sensitive functions.
  - c. Employee has used alcohol while performing safety-sensitive functions.
  - d. Employee has used alcohol during the eight (8) hours following an accident or until the employee has undergone a post-accident alcohol test.
  - e. Employee refused to submit to a required alcohol test (as defined in Section 11, E).
  - f. Employee has an alcohol concentration of **0.04** or greater, as determined by EBT results, when tested just before, during or just after performing safety-sensitive functions.

An employee found to have violated any provision of G, 1, a, shall be **immediately removed from safety-sensitive duty for twenty-four (24) hours**, and the incident shall be recorded. Further, the employee **will be subject to disciplinary action up to and including termination of employment**.

No employee who has engaged in any prohibited alcohol conduct as defined in section G, 1, b-f, **shall be allowed to perform safety-sensitive functions until the employee has been evaluated by a substance abuse professional**. Before an employee returns to duty performing a safety-sensitive function; **the employee must undergo a return to duty alcohol test with a result indicating alcohol concentration of less than 0.02**.

- 2) **Consequences of Use of Drugs** - An employee who has a verified positive drug test result must be **immediately removed from safety-sensitive functions**. The employee who has a verified positive drug test result **shall not be allowed to perform safety-sensitive functions until the employee has been evaluated by a substance abuse professional**. Before an employee returns to duty performing a safety-sensitive function, the employee **must undergo a return to duty substance test with a verified negative result**.

An employee who has an initial verified positive drug test result **will be subject to disciplinary action up to and including termination of employment.**

However, the Maine Substance Abuse Testing Law provides that before any disciplinary action is initiated in the case of an employee who has an initial verified positive drug test result, the employer shall provide the employee with an opportunity to participate for up to six (6) months in a rehabilitation program. If the employee chooses not to participate in a rehabilitation program, the employee is subject to the disciplinary provisions of this policy.

Any subsequent verified positive drug test will result in disciplinary action up to and including termination of employment.

- 3) **Refusal to Submit to a Required Alcohol or Drug Test (as defined in Section 11, E.)** Refusal or failure to submit to a required alcohol or drug test constitutes a failed test (not subject to the provisions of the Maine Substance Abuse Testing Law noted above), resulting in immediate removal from safety-sensitive duty and appropriate disciplinary action as prescribed under Section G 1, and 2. **The employee may not return to safety-sensitive duty until he or she has undergone return-to-duty testing with verified negative results. The employee shall be subject to the provisions for follow-up testing as defined in Section 11, D, 6.**

#### **H. Training for Supervisors**

The State of Maine shall ensure that all supervisors and other persons designated to determine whether reasonable suspicion exists to require an employee to undergo testing must receive a minimum of sixty (60) minutes of training on alcohol misuse and a minimum of sixty (60) minutes of training on controlled substances use. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

The training shall include an overview of the program requirements, disciplinary procedures, confrontation and documentation procedures, and rehabilitation and treatment options which are available.

#### **I. Training for Safety-Sensitive Employees**

- 1) Each department participating in the Maine State Government CDL Drug and Alcohol Testing Program shall ensure that all employees performing job functions deemed safety sensitive shall receive a copy of this policy.
- 2) Each department participating in the Maine State Government CDL Drug and Alcohol Testing Program shall ensure that all new employees performing job

functions deemed safety sensitive hired after the date of this policy being adopted shall receive a copy of this policy and the educational materials listed below:

- The identity of the person designated by the employer to answer driver questions about the materials;
  - Specific information concerning driver conduct that is prohibited by federal regulation and this policy;
  - The circumstances under which a driver will be tested for alcohol and/or controlled substances under federal regulation and this policy, including post-accident testing under 49 CFR 382.303(d);
  - The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, 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 this policy and 49 CFR 382.303(d);
  - The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this policy and federal regulations;
  - An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;
  - The consequences for drivers found to have violated this policy and the federal regulations, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures that can follow such removal;
  - The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;
  - 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 co-worker'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.
- 3) Each department shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each department shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

## **J. Supervisory Responsibilities**

It is the policy of the State of Maine that:

- 1) Supervisors are responsible for determining through direct observation whether an employee is capable of performing his or her assigned

duties. Determinations shall be based on specific, contemporaneous, articulable, reliable observations concerning the appearance, behavior, speech, or body odor of the employee.

- 2) Employees who are suspected of being unfit for duty as a result of alcohol or drug use should be required to undergo reasonable suspicion drug and/or alcohol testing in accordance with FHWA rules and this policy. Supervisors should immediately bring their observations to the attention of their managers in order that arrangements for testing can be implemented as soon as practicable.
- 3) Employees who are suspected of being impaired and unfit for duty may not remain at the work place. Incidents and behavior described in #1 above should be witnessed and documented immediately. The supervisor's manager should be consulted and advised of the incident. An employee who is impaired should not be allowed to drive home from the work place.
- 4) The fact that an unfit employee engaged in prohibited behavior as defined in Sections 11, C and G was not allowed to remain at work or is removed from safety-sensitive duties is not considered a disciplinary suspension. After the employee is removed from safety-sensitive duties or removed from the workplace, supervisors and managers should discuss the specifics of the situation with their department human resource/employee relations staff to review appropriate disciplinary action. Each situation will be evaluated on a case-by-case basis.

#### **K. Management Responsibilities**

It is the policy of the State of Maine that:

- 1) A drug and alcohol free workplace shall be maintained through the efforts and personal example of management.
- 2) Subordinate managers and supervisors who fail to perform their duties and responsibilities as outlined in this policy **will be subject to disciplinary action up to and including termination of employment.**
- 3) Managers and supervisors are encouraged to discuss with employees any behavior or job performance factors that may indicate the use of drugs, alcohol, or other violations of this policy and to suggest, when appropriate, that employees seek assistance through the Employee Assistance Program (EAP).
- 4) Effective January 1, 1995, managers shall direct employees in designated safety-sensitive positions to comply with the provisions for pre-employment,

reasonable suspicion, random, post-accident, return to duty, and follow-up testing in accordance with the FHWA rules.

- 5) Supervisors who make reasonable suspicion determinations must receive training on the physical, behavioral, and performance indicators of probable drug use and alcohol misuse. Supervisors shall be instructed on the principle of the "reasonable prudent individual" in reasonable suspicion decisions.

#### **L. Employee Assistance Program (EAP)**

The State of Maine's EAP is a confidential voluntary service available to all employees and their family members. The EAP was created with the aim to assist employees and their families in maintaining their health and well-being.

The State of Maine and the unions representing State employees recognize that a wide range of problems, not directly associated with an employee's work, may have an adverse effect on an employee's work, may have an adverse effect on an employee's job performance and health. Further, personal problems of a family member may also affect an employee's job performance. It is recognized that many personal problems can be successfully treated, provided the problem is identified and referral is made to an appropriate source. The State of Maine EAP offers assistance on a broad range of issues - marital or family discord, distress, alcohol or drug abuse, legal problems, or other concerns. These problems are recognized as progressive and potentially destructive, but they are also recognized as treatable disorders.

Any employee who may be experiencing a problem of this type is encouraged to seek information and assistance on a confidential basis by contacting the EAP.

Participation in the EAP is on a voluntary basis. Although supervisors, union officials and co-workers may encourage an employee to seek help, the decision to seek and accept assistance is the responsibility of the employee.

Participation in the EAP is strictly confidential. All records and information regarding referral, diagnosis, and treatment will be maintained by the EAP and treated as confidential. The program ensures that participants' names and the nature of the problems are not available to supervisors, co-workers, or anyone else.

Employees participating in the EAP are not immune from discipline, however, employees will be evaluated strictly on job performance. Participation in the program will not be used against anyone in disciplinary proceedings, nor will participation be detrimental to an employee's job security, promotional opportunities or status.

The EAP is a free service at no cost to participants. If an employee is referred by the EAP to other professional services, the EAP will review the health insurance benefit

plan to determine what, if any, costs must be assumed by the employee. Every effort will be made to refer employees to the least costly, highest quality resource available.

All employees in safety-sensitive positions and their respective supervisors shall receive training on the services, access, and use of the EAP. Such training may be conducted separate from the training required under H and I above.

#### **M. Dilute Samples – Current Employee**

- 1) If the Medical Review Officer (MRO) reports that a positive drug test was dilute, the test will be treated as a verified positive test. The employee will not be directed to take another test based on the fact that the specimen was dilute.
- 2) If the MRO reports that a negative drug test was dilute and directs that a retest be conducted under direct observation, a second test will be conducted immediately.
- 3) In cases where the MRO does not direct that a second test be conducted, the department will direct the employee to take another test immediately. This test will not be conducted under direct observation.
- 4) If an employee's retest is reported by the MRO as also being negative dilute the employee **will not** be offered a third test unless so directed by the MRO.
- 5) The second test will be considered a negative test and will be the test of record.
- 6) If the employee declines to take a retest, the employee has refused the test for purposes of this policy and DOT agency regulations.

#### **N. Dilute Samples – Applicant for a CDL Safety Sensitive Position**

1. If an applicant for Maine State Government employment required to take a pre-employment test under the State's drug and alcohol testing policy has a test result reported by the MRO as positive, positive – dilute, substituted, cancelled – invalid result, or adulterated, the applicant **will not** be offered employment in Maine State Government.
2. If an applicant for Maine State Government employment required to take a pre-employment test under the State's drug and alcohol testing policy has a test result reported as negative – dilute, the applicant **will not** be offered a second test and the applicant will also **not** be offered a job in Maine State Government if the job requires the applicant, once hired, to hold a Commercial Driver's License (CDL) and to participate in the State's Drug and Alcohol Testing Program **unless** the applicant meets the requirements set forth in #3.

3. An applicant who has a pre-employment test result reported as negative – dilute may be offered a job if the applicant produces a certificate, within 15 work days of being notified of the negative – dilute, from a physician, licensed to practice medicine in Maine and who is also either a Certified Medical Review Officer or board certified in occupational medicine, which states that as a result of a medical examination, the physician has identified a known medical reason why the applicant's creatinine level is outside the normal standard laboratory range.
4. If an applicant produces a certificate from a physician, licensed to practice medicine in Maine and who is also either a Certified Medical Review Officer or board certified in occupational medicine, which states that as a result of a medical examination the physician reports that there was not an adequate medical explanation for why the applicant's creatinine level is outside the normal standard laboratory range, then the applicant will not be offered a job in Maine State Government if the job requires the applicant, once hired, to hold a Commercial Driver's License (CDL) and to participate in the State's Drug and Alcohol Testing Program.
5. Any cost to an applicant to obtain such a certificate will be the responsibility of the applicant and not Maine State Government.

#### **O. Employee Admission of Alcohol and Controlled Substances Use**

Maine State Government encourages drivers who recognize that they may have a problem with drugs and/or alcohol to seek assistance for resolving that problem before they have a DOT violation due to a positive test result or because they engaged in other DOT prohibited conduct.

A driver who admits to a drug and/or alcohol problem will not have a DOT violation. He/she will be given an opportunity to obtain a chemical use assessment from Maine State Government's Employee Assistance Program (EAP). Prior to the assessment, however, Maine State Government will require the driver to sign a release of information that will enable Maine State Government's DER (Designated Employer Representative) to receive the results of the assessment, and to receive subsequent reports related to the assessment, and the driver's successful completion of all recommendations for assistance.

The following conditions must apply to the driver's self-admission:

- The driver's admission cannot be made during his/her on-duty time. It must occur prior to the driver's reporting for duty on any particular day.
- The driver's admission cannot be made in an attempt to avoid a required DOT drug test.
- 49 CFR Part 382.121 requires Maine State Government to remove the driver from safety-sensitive functions, including driving.

- When Maine State Government is satisfied that the driver has complied with the EAP's recommendations for assistance, Maine State Government will return the driver to safety-sensitive functions, provided that:
  - Prior to returning to safety-sensitive functions, the driver will be required to provide a negative DOT drug and/or alcohol test result on a Return-to-Duty test.
- A driver who self-identifies under this policy, and who then fails to comply with the EAP's recommendations will be considered to have engaged in conduct prohibited by the DOT in 49 CFR Part 382, Subpart B, and will not be permitted to return to safety-sensitive function until he/she has successfully complied with the SAP return-to-duty process.

Maine State Government will adhere to the following terms, in accordance with 49 CFR Part 382.121;

- Maine State Government will take no adverse action against a driver who admits to drug and/or alcohol use under the terms above.
- A driver who self-identifies under this program will be given reasonable time to obtain the required assessment and assistance. Maine State Government requires the assessment process to be initiated within three (3) days of the driver's disclosure.
- A driver who complies with all requirements, and who complies satisfactorily with the EAP's recommendations for assistance, will be permitted to return to safety-sensitive functions.
- A driver who cooperates and successfully complies with this program will not be considered to have had a DOT violation of prohibited conduct under 49 CFR Part 382, Subpart B.

#### **P. Random Testing Percentages**

The annual percentage of employees randomly tested for alcohol and drug testing shall comply with the annual minimum drug and alcohol random testing rates established within U.S. DOT Agencies.

#### **Q. Prescription Medical Marijuana Use**

Any safety sensitive employee who operates vehicles requiring a CDL and who is prescribed marijuana under the Maine Medical Marijuana law shall inform his/her department's Equal Employment Opportunity Coordinator that they are a registered patient.

**R. Random Pool Database Updating**

Each department participating in the State of Maine Drug and Alcohol Testing Program agrees to provide to the Office of Employee Benefits on a quarterly basis, if necessary, any addition or deletion of names to the random pool list. Additions could result from new hires or transfers, while deletions could result from retirements, terminations or change in CDL driving status.

**S. Drug and Alcohol Testing Program Manager**

Questions regarding the drug and alcohol testing program and the policies and procedures required for compliance with federal law and rules shall be directed to the designated program manager identified below.