

## Rutherford County Drug Policy

### Section 1. Purpose and Scope of Policy

A. The purpose of this Policy is to maintain a drug- and alcohol-free workplace and to provide procedures for conducting screenings of job applicants and employees for the use of illegal drugs and the improper use of prescription drugs.

B. Employees with substance-abuse problems are encouraged to voluntarily seek help from the employee assistance program. However, employees who fail drug or alcohol tests may be disciplined, up to and including termination.

C. All testing will be conducted in a manner that will protect the rights of employees and applicants subject to testing. Therefore, Rutherford County will take all necessary steps to safeguard the dignity and self-esteem of those being tested, and will ensure adherence to all procedures pertaining to the implementation of this Policy. Rutherford County will adhere strictly to all standards of confidentiality and assure all employees that testing records and results will be released only to those authorized to receive such information.

D. Participation in a counseling, treatment, or rehabilitation program for drug and/ or alcohol use or abuse will not be grounds for discharge provided the employee voluntarily enters such a program prior to being identified as a drug user/abuser or alcohol abuser by means such as tests, and before the employee becomes suspected under circumstances satisfactory to the Rutherford County Drug Policy of being a drug user/abuser or alcohol abuser.

### Section 2. Drug and Alcohol Tests Required by the United States Department of Transportation

This section covers all employees who must hold a commercial driver's license as a job requirement and all employees who perform other safety-sensitive functions as defined by the U.S. Department of Transportation (DOT) regulations.

A. Pre-placement. Before a covered employee initially performs safety-sensitive functions for Rutherford County he or she must undergo testing for drugs. Covered applicants for employment or current covered employees transferring into a position that requires testing must pass a pre-placement drug test.

B. Post Accident. Post-accident testing must be conducted on any driver or any other safety-sensitive employee not in the vehicle (e.g., maintenance personnel) whose performance could have contributed to the accident. A determination whether to test covered employees who were not in the vehicle but who may have contributed to the accident will be made based on the best information available at the time of the decision. The Federal Highway Administration mandates that tests must be conducted in the event of a fatality or if the driver receives a citation under state or local law for a moving traffic violation arising from the accident. Federal Transit Administration mandates testing in the event of a fatality or in the event that a driver receives a citation and an individual suffers a bodily injury and immediately receives medical treatment away from the accident scene or if one of the vehicles in the accident is disabled to the extent that it must be towed.

C. Reasonable Suspicion: A test will be conducted when there is reason to believe that the employee has used a prohibited drug or has misused alcohol as defined in this Policy. Reasonable-suspicion testing is authorized only if the required observations are made by a trained supervisor or official of the locality where the covered employee is on duty.

D. Random Testing: Employees designated as safety sensitive, as defined by the DOT guidelines will be tested on an unannounced basis throughout the year. Computer-based random numbers generated and matched with the employee's identification number will determine who is tested.

E. Return to Duty: An employee who has a positive breath alcohol test of 0.04 or greater will not be allowed to return to duty in the performance of a safety-sensitive function until he or she has been evaluated by a substance abuse professional and until he or she tests negative—less than 0.02—on a return-to-duty alcohol test.

F. Follow-up: Once allowed to return to duty an employee who has been determined by the evaluating substance abuse professional to be in need of assistance in resolving problems associated with misuse of drugs and/or alcohol must submit to a minimum of six follow-up tests within the first twelve months following rehabilitation. Follow-up testing may be extended for up to six months following return to duty as prescribed by the evaluating substance abuse professional.

### Section 3. Drug and Alcohol Abuse and Testing Policy for all Employees:

A. The unlawful manufacture, distribution, dispensation, possession, purchase, or use of drugs by employees is prohibited and constitutes grounds for immediate termination.

B. The manufacture, distribution, dispensation, possession, storage, purchase, or use of alcohol by employees while at the work place is prohibited and constitutes grounds for immediate termination.

C. Employees who are terminated as a result of a violation of this Policy shall be referred to the employee assistance program for evaluation and further counseling or treatment by a substance abuse professional.

D. An employee who tests positive for alcohol and is not terminated will receive a five-day suspension without pay, one hundred-eighty-day performance probation, and a mandatory referral to a substance abuse professional. The employee shall be evaluated by the substance abuse professional and follow any rehabilitation program prescribed. The employee shall be subject to all other return of work provisions as outlined in this Policy. Refusal to comply with the rehabilitation program prescribed by the substance abuse professional will result in termination. However, before proceeding with disciplinary action, the employee's department head must assure that the facts of the case are reviewed by the human resources department. A second such occurrence of a positive alcohol test within five years of the first occurrence will result in termination.

E. No safety-sensitive employee shall use alcohol within four hours before going on duty or operating, or having physical control of a commercial motor vehicle or transit service vehicle.

F. No employee shall report for duty or remain on duty in a safety-sensitive function while having an alcohol concentration of 0.04 or greater. An employee who reports to work and whose breath alcohol test result indicates a 0.04 or greater level of alcohol in the employee's system shall be considered to have a positive alcohol test and shall be disciplined as outlined in this Policy

G. When there is reasonable suspicion (see Section 7, Definitions) that an employee on duty has alcohol or drugs in his or her system, the employee will be tested. If the employee tests positive and management concludes that alcohol or drug consumption occurred on the job, the employee will be terminated. If the employee test positive and department management concludes that alcohol or drug consumption occurred while not on the job the employee shall receive appropriate discipline as outlined in this Policy.

H. Reasonable suspicion or post-accident alcohol test shall be administered no later than eight hours following the determination of reasonable suspicion or following the accident. If the test is not administered within eight hours the supervisor must document the reason(s) the alcohol test was not promptly administered. If the alcohol test is not administered within eight hours following the determination of reasonable suspicion or following the accident, the supervisor shall cease attempts to administer the test and must document the reasons for not administering the test. In the event an alcohol test is not conducted within the eight-hour time frame the following should occur:

1. No employee shall be allowed to remain on duty until an alcohol test is administered and the employee's alcohol concentration measures less than 0.02.

2. Twenty-four hours have elapsed following the determination of reasonable suspicion.

No employee may refuse to submit to an alcohol test as required by the regulations.

I. A written record shall be made of the observations leading to a drug or alcohol test for reasons of reasonable suspicion and signed by the supervisor or departmental designee who made the observations. This observation must be documented within twenty-four hours of the observed behavior or before the results of the controlled-substances test are released, whichever is earlier.

J. A post-accident drug test shall be administered within thirty-two hours following the accident. If the drug test is not administered within thirty-two hours, the supervisor shall cease attempts to administer a drug test and must document the reason(s) for not administering the test. No employee may refuse to submit to a drug test required by the regulations.

No safety-sensitive employee involved in an accident that requires an alcohol test shall consume any alcohol for eight hours following the accident or until a post-accident alcohol test is performed, whichever comes first.

K. An employee who is tested (exclusive of the return-to-duty test) and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform or continue to perform his or her job functions until the start of the employee's next regularly scheduled duty period, but not less than twenty-four hours following administration of the test. The employee shall be removed from duty without pay for this twenty-four hour period and shall receive a notation in his or her performance appraisal about the requirement of reporting to work without the presence of alcohol in his or her system.

L. Employees assigned to positions that are determined to be safety sensitive will be randomly tested for alcohol and drugs. Selected employees will be transported to the designated testing location. Random testing for drugs and alcohol shall be conducted at the rate mandated by DOT or city policy.

M. A drug and alcohol test will be included as part of the promotion/demotion/ transfer/selection process for employees determined to be final candidates for positions requiring a commercial driver's license for positions requiring a physical examination and for positions that are safety sensitive.

N. An employee who tests positive for alcohol must submit to a return-to-duty breath alcohol test before resuming the performance of safety-sensitive functions following a disciplinary suspension. The return-to-duty alcohol test must indicate an alcohol concentration of less than 0.02. A return-to-duty breath alcohol test result of 0.02-0.039 will result in a five-day suspension without pay. A return-to-duty breath alcohol test result of 0.04 or greater will be considered as the second positive alcohol test within a five-year period and will result in termination.

O. An employee who refuses to submit to, or fails to follow through with, a drug or alcohol test when testing is required by this Policy will be terminated. However, before proceeding with disciplinary action, the employee's department head must assure that the facts of the case are reviewed by the human resources department.

P. If an employee alleges that because of medical reasons he or she is unable to provide a sufficient amount of breath to permit a valid breath test, the breath alcohol technician shall instruct the employee a second time to attempt to provide an adequate amount of breath. If the employee continues to allege an inability to provide a sufficient amount of breath for the test, the department shall be notified that the employee has refused to be tested. The employee will be directed to obtain, as soon as practicable after the attempted provision of breath, an evaluation from a licensed physician acceptable to Rutherford County addressing the employee's medical ability to provide the adequate amount of breath. If there is not a medical reason acceptable to management for the employee's inability to provide the breath, the employee will be considered to have refused to submit to the alcohol test and will be disciplined according to the guidelines established by this Policy.

Q. An employee who does not pass the drug or alcohol test and is terminated will not be considered for re-employment for a two-year period following the date of the test and then will be considered only when (a) he or she provides documentary proof of successful completion of a drug and/or alcohol abuse treatment or rehabilitation program and (b) he or she passes a pre-placement drug and/or alcohol test.

R. An employee shall inform his or her supervisor if, prior to beginning work or while he or she is on duty, that he or she has used or intends to use any prescription drug, over-the-counter drugs, or other substance that might impair his or her ability to satisfactorily perform duties. Employees are responsible for a thorough understanding of the effects

and potential side effects of medications or other chemical substances taken. Failure to notify the supervisor under these circumstances may result in disciplinary action up to and including termination depending on the severity of the resulting incident. The human resources department will be consulted prior to such discipline being imposed.

S. The medical review officer will review the findings of a drug test with the employee before a final determination is made that the employee did not pass the drug test. The purpose of this review is to ensure that the findings of a positive test are not based on factors other than the use of the drug for which the positive result is found.

T. Employees returning to the workforce following completion of a drug and/or alcohol rehabilitation program will be tested on an unannounced and periodic basis for drugs and/or alcohol during the sixty months following their return to work. Those employees covered by DOT guidelines must submit to a minimum of six follow-up tests within the first twelve months following rehabilitation. A follow-up breath alcohol test result of 0.04 or greater will result in termination. A follow-up breath alcohol test result of 0.02-0.039 will result in a five-day suspension without pay. A second such occurrence of a follow-up breath alcohol test result of 0.02-0.039 within the prescribed sixty-month period will result in termination.

U. If an employee is convicted of a violation of a criminal drug statute and such violation occurred while the employee was on duty, the employee must notify his or her department head of the conviction within five days after such conviction. (NOTE: This is a requirement of the Drug-Free Workplace Act.) Failure to comply with this requirement will result in termination.

#### Section 4. Applicant Testing

A. Applicants determined to be final candidates for full time positions and for positions requiring a commercial driver's license will be required to submit to a drug screening. The drug screen shall be performed within forty-eight hours from the time the conditional job offer is made.

B. Applicants determined to be final candidates for positions requiring a commercial driver's license or positions designated as safety sensitive by DOT guidelines will also be required to submit to an alcohol screening. The applicant must have a breath alcohol test result of less than 0.04 to be considered for employment.

C. Applicants for temporary positions requiring a commercial driver's license, or positions designated as safety sensitive by DOT guidelines, will be required to submit to a drug and alcohol screening.

D. It is strongly recommended that applicants for temporary positions designated as safety sensitive be required to submit to a drug screen.

E. Candidates for other temporary positions should be required to submit to a drug screen if the department determines that the nature of the job and the length of the assignment justifies a test.

F. An applicant will have four hours to provide an acceptable urine specimen. An applicant who refuses to submit to, or fails to follow through with, the drug test as required, will not be considered for employment for a two-year period.

G. An applicant who does not pass the drug test as required will not be considered for employment for a two-year period following the date of the test and then will be considered only when (1) such applicant provides documentary proof that he or she has successfully completed a drug and/or alcohol abuse or rehabilitation program and (2) such applicant passes a pre-placement drug and/or alcohol test.

H. Any applicant covered by the provisions of the DOT alcohol and drug-testing guidelines whose breath alcohol test result indicates an alcohol concentration of 0.02-0.039 will not be considered for employment for a two-year period following administration of the test.

I. Applicants having completed a drug or alcohol rehabilitation program within two years prior to their employment with Rutherford County will be required to certify that they have successfully completed the program before they can be hired. If hired, these employees will be tested on an unannounced and periodic basis for drugs and/or alcohol during

the sixty months following their hire.

## Section 5. Compliance with Law

A. Information regarding the testing and referral of employees and applicants under this Policy will be treated as confidential in accordance with the requirements of North Carolina law governing the privacy of employee personnel records.

B. Searches and seizures are to be conducted in a legal manner. Rutherford County reserves the right to conduct searches or inspections of property assigned to an employee whenever a department head or his or her designee determines that the search is reasonable under all circumstances.

## Section 6. Supervisory Responsibilities

Every supervisor shall:

A. Consistently apply this Policy to all employees under his or her supervision. A supervisor who fails to apply this Policy when he or she believes, or reasonably should believe, that an employee under his or her supervision has committed a violation will be disciplined.

B. Initiate the process for having an employee drug or alcohol tested if there is reasonable suspicion that an employee under his or her supervision, when such employee is on duty, has an illegal drug or alcohol in his or her system or is using any legal drug in a manner other than it was intended.

C. Insure that employees he or she supervises are aware of the requirements and consequences of this Policy.

D. Follow the procedure established by the department head for assuring that an employee who is to be tested for alcohol or other drugs is transported to the designated test site, and that those employees for whom there is reasonable suspicion of substance abuse or who have had a breath alcohol test result of 0.02 or greater are transported home—either by personal family/friends or by arranged transportation.

## Section 7. Employee Responsibilities

Every employee shall:

A. Abide by this policy as a condition of employment.

B. Comply with all applicable laws regulating the manufacture, distribution, dispensation, use or possession of illegal drugs, alcohol, or prescription drugs.

C. Assure that his or her ability to perform his or her job duties is not negatively affected due to use of a drug or alcohol when scheduled to report to work or when on "on call" status. Should any employee be requested to report to work for a safety-sensitive job earlier than his or her normal or previously assigned time, it is the employee's responsibility to advise his or her supervisor of an inability to perform his or her job duties or that he or she has consumed alcohol within the last four hours prior to reporting for duty. If the employee had received prior notice that he or she might be called back into work the employee shall be considered AWOL if he or she is unable to report to duty. An employee may be subject to other disciplinary action due to inability to report for duty.

D. Submit immediately to a drug or alcohol test when requested by his or her supervisor.

E. Notify his or her department head, if convicted of a violation of a criminal drug statute and such violation occurred while the employee was on duty, within five days after such conviction, as required by the Drug-Free Workplace Act.

## Section 8. Definitions

Accident means an occurrence involving a commercial motor vehicle operating on a public road that results in a

fatality; bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle(s) to be transported away from the scene by a tow truck or other vehicle.

Alcohol test means a test for the presence of alcohol in the body as determined through the use of a breath alcohol test, evidential breathalyzer test, or blood screening.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug statutes.

Criminal drug statute means a criminal statute relating to the manufacture, distribution, dispensation, use or possession of any drug.

Drug means a controlled substance as listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 USC 812) or Chapter 90, Section 87(5) of the North Carolina General Statutes or a metabolite thereof.

Drug test and drug screening means a test, including providing the necessary sample of body fluid by the employee to be tested, for the presence of any of the following drugs or drug metabolites in the urine or blood of an employee:

- a. amphetamines
- b. barbiturates
- c. benzodiazepines
- d. cannabinoids
- e. cocaine
- f. methaqualone
- g. opiates
- h. phencyclidine
- i. propoxyphene
- j. other drugs that may be determined to reduce work efficiency

Medical review offer is a North Carolina?licensed physician with specific training in the area of substance abuse. The medical review officer not only has knowledge of substance abuse disorders, but also has been trained to interpret and evaluate laboratory test results in conjunction with an employee's medical history. The medical review officer verifies a positive drug test result by reviewing a laboratory report and an employee's unique medical history to determine whether the result was caused by the use of prohibited drugs or by an employee's medical condition.

On call means being subject to a call to report immediately to work for Rutherford County.

On duty means when an employee is at the workplace, performing job duties, on call, or during any other period of time for which he or she is entitled to receive pay from Rutherford County.

Other substance means any substance that has the potential to impair appreciably the mental or physical function of a person who does not have an unusual or extraordinary reaction to such substance.

Positive, with respect to the results of a drug test, means a laboratory finding of the presence of a drug or a drug metabolite in the urine or blood of an employee at the levels identified by the Substance Abuse and Mental Health Services Administration (SAMHSA), or for drugs not subject to SAMHSA guidelines, at the levels identified by Rutherford County; all positive tests will be confirmed using a different technology than was used for the first test, such as the gas chromatography/mass spectrometry (GCiMS) process.

Positive, with respect to the results of an alcohol test, means the presence of alcohol in an employee's system at the 0.04 level or greater.

Negative, with respect to the results of a drug test, means a test result that does not show presence of drugs at a level specified to be a positive test.

Negative, with respect to the results of an alcohol test, means a test that indicates a breath alcohol concentration of less than 0.02.

Qualified negative, with respect to the results of a drug test, means a test in which the lab result is consistent with legal drug use.

Canceled, with respect to the results of a drug test, means a test result in which the medical review officer finds insufficient information or inconsistent procedures with which to make a determination.

Random testing is testing conducted on an employee assigned to a safety-sensitive position and is chosen by a method that provides an equal probability that any employee from a group of employees will be selected.

Reasonable suspicion exists when a supervisor, who has received the required training in detecting the signs and symptoms of probable drug and/or alcohol use, can substantiate specific contemporaneous, articulable observations concerning appearance, behavior, speech, or body odor or other physical indicators of probable drug or alcohol use. By way of example and no limitation, any one or a combination of the following may constitute reasonable suspicion:

- a. slurred speech
- b. the odor of marijuana or alcohol about the person
- c. inability to walk a straight line
- d. an accident resulting in damage to property or personal injury
- e. physical altercation
- f. verbal altercation
- g. behavior that is so unusual that it warrants summoning a supervisor or anyone else in authority (i.e., confusion, disorientation, lack of coordination, marked personality changes, irrational behavior)
- h. possession of drugs
- i. verifiable information obtained from other employees based on their observations
- j. arrests, citations, and deferred prosecutions associated with drugs or alcohol.

Unannounced follow up - testing is testing conducted on an employee on a periodic, unannounced basis, following his or her return to work from an approved drug or alcohol rehabilitation program.

Preplacement testing is testing conducted on a current city employee prior to his or her being promoted, transferred, or demoted into a safety-sensitive position.

Safety-sensitive position means:

A position will be designated safety sensitive only where Rutherford County has a compelling need, on the basis of safety concerns, to ascertain on-the-job impairment on the part of employees who hold the position. Such a compelling need may arise where the duties of a position create, or are accompanied by, such a great risk of injury to other persons or to property of such magnitude that even a momentary lapse of attention, judgment, or dexterity could have disastrous consequences.

Examples of these positions include:

- a. Positions (full or part time) requiring the use of weapons (or potential use of weapons) or the operation of vehicles, machinery, or equipment as a primary task (does not include routine office equipment).
- b. Positions requiring the handling of hazardous materials, the mishandling of which may place the employee, fellow employees, or the general public at risk of serious injury, or the nature of which would create a security risk in the workplace.
- c. Other positions as determined on a case-by case basis.

The following includes activities defined as safety sensitive by the Federal Highway Administration or Federal Transit Administration portions of the DOT guidelines:

- a. Driving.
- b. Inspecting, servicing, or conditioning any commercial motor vehicle.
- c. Waiting to be dispatched at a carrier or shipper plant, terminal, facility, or other public property.
- d. Performing all other functions in or upon any commercial motor vehicle except resting in a sleeper berth.
- e. Loading or unloading a vehicle, supervising or assisting in the loading or unloading of a vehicle, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments being loaded or unloaded.
- f. Performing driver requirements relating to accidents.
- g. Repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- h. Operating a revenue service vehicle, including when not in revenue service.
- i. Operating a nonrevenue service vehicle when required to be operated by a holder of a commercial driver's license.
- j. Controlling dispatch or movement of a revenue service vehicle.
- k. Maintaining a revenue service vehicle or equipment used in revenue service.
- l. Carrying a firearm for security reasons.

Determination as to which positions are safety sensitive will be based on DOT guidelines or the recommendation of the department head and approval by the personnel department.

Superior in general, means any employee who has the authority to direct the job activities of one or more other employees. With respect to a particular employee, the term means such employee's immediate supervisor and all persons having indirect supervisory authority over such employee.

Pass a drug test means that the result of a drug test is negative. The test either:

- a. showed no evidence or insufficient evidence of a prohibited drug or drug metabolite, or
- b. showed evidence of a prohibited drug or drug metabolite, but there was a legitimate medical explanation for the result as determined by a certified medical review officer.

Pass an alcohol test is a negative alcohol test. The test showed no evidence or insufficient evidence of a prohibited level of alcohol.

Workplace means the location or facility where an employee may be expected to perform any task related to the requirements of his or her job. This includes break rooms and restrooms, outdoor worksites, Rutherford County or personal vehicles (while personal vehicle is being used for Rutherford County business) computer work stations, conference rooms, hallways, private offices, open/partitioned work areas, public contact/customer service/medical services areas, and parking lots.

Substance abuse professional means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of both drug and alcohol related disorders.

Commercial motor vehicle means ~ motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle

- a. 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
- b. has a gross vehicle weight rating of 26,001 or more pounds: or
- c. is designed to transport 16 or more passengers, including the driver: or
- d. 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 and that requires the motor vehicle to be placed under the Hazardous Materials Regulations.

Confirmation test for alcohol means a second test following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration. Confirmation test for controlled substances means a second

analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screen test and that uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC,MS) is the only authorized confirmation method for the five SAMHSA drugs.

Refuse to submit means that an employee (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, (3) refuses to sign the breath alcohol confirmation test certification or (4) engages in conduct that clearly obstructs the testing process. An employee subject to the post-accident testing requirements of the DOT who unnecessarily leaves the scene of an accident before a required test is administered or fails to remain readily available for testing may be deemed to have refused to submit to testing.