



<input type="checkbox"/> Administrative Policy
<input type="checkbox"/> Operational Policy

## Clackamas County Policy

Name of Policy	Drug and Alcohol Testing Policy – Department of Transportation (USDOT)	Policy #	EPP 63
Policy Owner Name	Evelyn Minor-Lawrence	Effective Date	11/20/2023
Policy Owner Position	Human Resources Director	Approved Date	11/20/2023
Approved By	Gary Schmidt, County Administrator	Last Review Date	11/20/2023

**I. PURPOSE AND SCOPE**

To comply with U.S. Department of Transportation (DOT) federal regulations regarding drug and alcohol testing and to provide guidelines to employees who voluntarily seek assistance.

This policy applies to covered employees who fall under the DOT Testing Regulation (49 CFR Part 40). This includes Federal Motor Carrier Safety Administration (FMCSA) 49 CFR Part 382, the Federal Aviation Administration (FAA) 14 CFR Part 120, and the United States Coast Guard (USCG) 49 CFR Parts 4 and 16.

**II. AUTHORITY**

County Code 2.09.060 authorizes the County Administrator to draft administrative rules and implement operational policies.

**III. GENERAL POLICY**

An employee substance abuse testing program is mandated for all entities regulated by the Department of Transportation (DOT). For these reasons, the County has implemented a substance abuse testing policy which applies to all applicants and employees who hold covered positions.

Covered employees may be tested for drugs or alcohol whenever they are on duty. Time spent in association with drug testing, specimen collection and/or alcohol testing shall be considered work time.

This policy includes assistance to employees who wish to overcome a drug dependency problem (see "Employee Assistance Program and Self-Referral").

**IV. DEFINITIONS**

See Appendix A.

**V. POLICY GUIDELINES**

**FAILURE TO COOPERATE**

Failure to cooperate with any aspect of this policy, including but not limited to falsifying or attempting to falsify test results or specimens or refusing to cooperate in testing will subject the employee to progressive discipline, up to and including termination of employment. Any covered employee who refuses to take a drug or alcohol test to comply with FMCSA regulations (49 CFR Part 382) will be immediately removed from duty as required by these federal regulations.

## **SEARCHING COUNTY PROPERTY**

There is no expectation of privacy; Clackamas County reserves the right to search, without consent, all areas and property over which the County maintains joint or full control. All County-owned, rented or leased vehicles, equipment, offices, desks and lockers, or any other County property, shall be subject to search. Refusal to submit to a search or refusal to cooperate in any investigation is subject to disciplinary action, up to and including termination.

## **DISCIPLINARY ACTION**

1. Applicants with verified positive drug test results will be considered ineligible for positions.
2. On any occasion in which a covered employee has a breath alcohol test result of 0.02 to 0.039, the employee will be immediately removed from work for a period of at least 24 hours. The employee may deduct this time away from work from any available paid time except sick leave, or choose leave of absence without pay. No further alcohol testing will be required prior to resuming work at the beginning of the next shift following the end of the 24-hour period.

Any covered employee who has had a confirmed alcohol result of 0.04 or above will be immediately removed from work and may be subject to the "Return To Duty Procedures" as outlined in this policy.

On any occasion in which a covered employee has a breath alcohol test result of 0.02 or greater, the employee will be considered in violation of this Policy, and will be subject to progressive discipline, up to and including termination of employment.

3. On any occasion in which a covered employee has a verified positive drug test, the employee will be considered in violation of this Policy, and will be subject to progressive discipline, up to and including termination of employment.
4. Covered employees who have volunteered information concerning drug or alcohol problems and/or voluntarily entered into drug and/or alcohol evaluation and treatment programs shall not have that admission used against them in progressive disciplinary proceedings.
5. Any covered employee found to be in violation of this Drug and Alcohol Testing Policy will be removed from duty, placed on paid administrative leave, and will be subject to progressive discipline, up to and including termination of employment.

## **RETURN TO DUTY**

The following statements reflect the return to duty and follow-up testing requirements of the FMCSA:

- 1) Covered employees who have had alcohol test results of 0.04 or greater must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A "return to duty" alcohol test with a result less than 0.02 is required prior to resumption of safety-sensitive or covered functions.
- 2) Covered employees who have had verified positive drug tests must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A negative "return to duty" drug test is required prior to resumption of safety-sensitive or covered functions.

- 3) Covered employees may be subject to periodic unannounced follow-up alcohol and/or drug testing as determined by the SAP who evaluated the employee.

Under the County's independent authority covered employees who have had alcohol test results of 0.04 or greater and/or a verified positive drug test and are awaiting recommendation for return to duty shall deduct this time away from work from any available paid time except sick leave (unless provided by law), or choose leave of absence without pay.

### **EMPLOYEE ASSISTANCE PROGRAM (EAP) AND SELF-REFERRAL**

The County supports treatment efforts for covered employees with drug/alcohol issues who, prior to official discovery, voluntarily seek assistance. Under these circumstances, there will be no adverse consequences to the self-identification, however, the admission must not be made in order to avoid testing or after notification of an upcoming test.

When a covered employee voluntarily reports a drug/alcohol issue BEFORE it is discovered, the employee will immediately be removed from duties. The employee will be required to use their appropriate accrued leave if available. The employee will be provided with a contact number for the County's EAP program and a list of locally available Substance Abuse Professionals (SAP). The employee may work with EAP, select a SAP of their choice, or a qualified drug/alcohol counselor of their choice for evaluation and recommendation of treatment.

An employee who wishes to seek confidential medical treatment for a drug or alcohol issue may also refer to and follow Clackamas County's Employment Policy and Practice #10 regarding Protected Leave of Absence.

Additionally, the employee may contact Human Resources to obtain information about existing leave and medical benefits provided under employment policies applicable to the employee.

In the event an employee who self refers enters into an outpatient treatment program, the County will provide appropriate work if available for the employee if available while undergoing outpatient treatment. In the event an employee who self refers enters into an inpatient treatment program and is on a wait list for an opening, the County will provide appropriate work if available for the employee until such opening becomes available. The employee will provide to the County a statement from the inpatient treatment facility that the employee is on a wait list and the approximate date a bed will become available.

Covered employees who have self-referred must be evaluated, undergo treatment, if required, and be recommended for return to their duties by the SAP. A negative drug and/or alcohol test is required prior to the resumption of all assigned duties. Follow-up drug and alcohol testing, if recommended by the treatment provider, will be conducted under the County's independent authority and processed as non-DOT tests. Time used for purposes of assessment, evaluation, counseling, treatment, and testing may be charged against available sick, vacation, or compensatory time leave accruals. If paid time is not available, the employee will be allowed use leave without pay or a leave of absence as allowed under the applicable current bargaining agreement or County policy.

**EDUCATION AND TRAINING**

The County will distribute a written copy of the US DOT Drug and Alcohol Testing Policy to covered employees and review their responsibilities regarding:

- compliance with federal drug and alcohol testing regulations and;
- drug/alcohol counseling, rehabilitation, and employee assistance resources.

Employees will be required to sign a form acknowledging receipt of this information, which will be placed in the employee’s personnel file.

Supervisors/Managers who may be required to make “reasonable suspicion” determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes EACH for 1) alcohol and 2) controlled substances use recognition.

**VI. PROCESS AND PROCEDURES**

See separate Process and Procedures Manual

**VII. ACCESS TO POLICY**

Access to this administrative policy shall be as follows:

- Filed in the County’s policy management system.
- Posted to the County’s internet.

**VIII. ADDENDA**

[Medication Notification Form](#)

EPP #10 [Protected Leave of Absence](#)

[Employee Assistance Program](#) (EAP)

**History of Employment Policy and Practice (EPP – 63)**

Implemented: XX/XX/XXXX

Clerical Update(s): XX/XX/XXXX

## APPENDIX A

For the purposes of this policy, the following definitions apply.

**Abuse/Misuse of Prescription Drugs and/or Over-The-Counter Medications:** The use of a prescription drugs or over-the-counter medications drug not in accordance with the prescribed or recommended dosage or method of use.

**Adulterated Specimen:** A specimen that contains a substance that is not expected to be present and/or is not consistent with testing thresholds.

**Alcohol:** The intoxicating agent in beverage alcohol, ethyl alcohol or ethanol, which is capable of and designed to be ingested by a human being

**Alcohol Screening Device (ASD):** A breath or saliva screening device approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

**Applicant:** External candidates applying for covered employee positions or internal employees moving from a non-operator position into a covered employee position.

**Breath Alcohol Technician (BAT):** An individual who has been trained to proficiency in the operation of the evidential breath testing device being used as required under 49 CFR Part 40.

**Breath Alcohol Testing Site:** A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

**Cannabidiol (CBD):** Any substance and/or product containing a Phyto cannabinoid derived from Cannabis species, which is devoid of psychoactive activity, with analgesic, anti-inflammatory activities.

**CFR:** United States Code of Federal Regulations.

**Chain of Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

**Collection Site:** A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen to be analyzed for the presence of drugs and/or alcohol.

**Collector:** A person who instructs and assists applicants and employees through the specimen collection process.

**Commercial Driver's License (CDL):** Generally, covered drivers are operators of commercial motor vehicles which 1) are greater than 26,000 pounds GVWR, 2) carry hazardous materials in placard able quantities, or 3) carry 16 or more passengers, including the driver.

**Confirmation Test:** A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

**Confirmed Positive Test:** A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA-certified laboratory, which performs the analyses.

**Controlled Substances:** Substances listed on Schedules I through V as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

### **Covered Employees**

#### **FMCSA**

A person who *operates (i.e., drives)* a Commercial Motor Vehicle (CMV) with a gross vehicle weight rating (gvwr) of 26,001 or more pounds; or is designed to transport 16 or more occupants (to include the driver); or is of any size and is used in the transport of hazardous materials that require the vehicle to be placarded.

#### **FAA**

A person who performs *flight crewmember duties, flight attendant duties, flight instruction duties, aircraft dispatch duties, aircraft maintenance or preventive maintenance duties; ground security coordinator duties; aviation screening duties; air traffic control duties, and operations control specialist duties.*

Note: Anyone who performs the above duties directly or by contract for a part 119 certificate holder authorized to operate under parts 121 and/or 135, air tour operators defined in 14 CFR part 91.147, and *air traffic control* facilities not operated by the Government are considered covered employees.

#### **USCG**

A person who is on board a vessel acting under the authority of a *license, certificate of registry, or merchant mariner's document.* Also, a person *engaged or employed on board a U.S. owned vessel* and such vessel is required to engage, employ or be operated by a person holding a license, certificate of registry, or merchant mariner's document.

**Designated Employer Representative (DER):** An employee authorized by the employer to assist supervisors in taking immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40.

**Dilute Specimen:** A specimen with creatinine and specific gravity values that are lower than expected.

**DOT:** United States Department of Transportation

**Drugs:** Controlled Substances, excluding any substance lawfully prescribed and authorized by a licensed medical practitioner for the covered employee's or applicant's use which is used according to the licensed medical practitioner's instructions. Medical marijuana is not a lawful prescribed substance under this policy.

**Initial or Screening Test:** An immunoassay screen to eliminate “negative” specimens from further consideration.

**Medical Review Officer (MRO):** A licensed physician who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results prior to their communication to the DER.

**Negative Drug Test:** A test result in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee's or applicant's system above established levels; OR, a test result which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

**On Duty:** When a covered employee is at work and ready to perform safety-sensitive functions, e.g., qualified, and available to drive a commercial motor vehicle.

**Over-The-Counter Medications:** Those which are generally available without a prescription from a licensed medical practitioner and are limited to those drugs which are capable of impairing the judgement or function of a covered employee to safely perform their duties.

**Positive Test:** A test result which indicates the presence of alcohol and/or controlled substances beyond the cut-off levels specified by 49 CFR Part 40.

**Random Testing:** Computerized random selection and testing in which each person in the computer database has an equal chance of selection each time a selection occurs, in accordance with regulatory requirements.

**Reasonable Suspicion:** Specific, articulable observations of an employee's condition or performance that indicate possible drug or alcohol use.

**Refusal to Submit:** Refusal by an individual to provide a specimen after receiving notice of the requirement to be tested in accordance with this policy.

**Reportable accident:** An accident involving a commercial motor vehicle in which:

- a. A fatality occurred, OR
- b. The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; OR
- c. The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

**SAMHSA (Substance Abuse and Mental Health Services Administration):** A division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

**Screening or Initial Test:** Immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Split Specimen Collection Procedure:** A collection procedure in which a specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

**Split Test:** If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

**Substance Abuse Professional (SAP):** Licensed physicians (Medical Doctors or Doctors of Osteopathy) or Licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (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 alcohol-related disorders.

**Substituted Specimen:** Altered specimen not consistent with human specimen.

**Tetrahydrocannabinol (THC):** A crystalline compound that is the main active ingredient of cannabis.

**Verified Positive Test:** A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.



## **US DOT DRUG AND ALCOHOL PROCESS and PROCEDURES MANUAL**

### **PRESCRIPTION AND OVER-THE COUNTER MEDICATIONS**

If taking prescription medications, covered employees shall ask their physicians for specific instructions as to how much medication they should take and when they should take it to ensure safe use relative to work. Covered employees shall follow the recommended dosage for over the counter medications.

Non-compliance with the recommended dosage of prescription and/or over the counter medications will be considered a violation of this policy.

All covered employees are required to notify their immediate supervisors when they are taking medications associated with warning labels (for example, relating to the operation of vehicles, heavy equipment, or machinery) by completing the [medication notification form](#). The form includes the following:

- the employee has discussed use of the medication with their doctor in relation to job duties;
- the type of medication;
- beginning and ending dates of treatment, and;
- both employee and supervisor signatures.

The supervisor shall place signed medical disclosure form in a sealed envelope for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with County management will determine whether to require written medical authorization to work from a prescribing health care practitioner or whether any accommodations are necessary.

The County will restrict access to medical information to Human Resources and will protect the confidentiality and security of the information. Medical information will only be shared on a need-to-know basis or as required by law.

All medicines brought onto County property/premises must be in their original containers. Prescription medications must have the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription medication is a violation of federal law and of this policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

### **MEDICAL AND RECREATIONAL MARIJUANA**

Marijuana is a Class I controlled substance; its possession and use is illegal under federal law. Although the State of Oregon permits the possession and use of marijuana, this is not an acceptable explanation for a positive drug test under this policy. The County will observe the terms of federal law, which preempt state law in this regard. The Medical Review Officer (MRO) will automatically verify positive tests as being positive without regard to the existence of a medical marijuana card.

The use of CBD substances and products shall not excuse a THC positive test under this policy.

In addition, possession of marijuana or products containing CBD on county property is grounds for dismissal.

## **ALCOHOL**

### Prohibitions:

- Covered employees must not use alcohol within four (4) hours prior to reporting for duty (“pre-duty use”).
- Covered employees are prohibited from possessing alcohol while on duty; from using alcohol while on duty; and from having alcohol present in their systems at a level of 0.02 g/210 L1 or greater while on duty. Those with levels of 0.02 or greater as demonstrated by alcohol testing are subject to immediate removal from duty for a minimum of 24 hours (see “Discipline” section)
- Covered employees are prohibited from using alcohol after an on-the-job accident until:
  - The DER or their designated alternate has determined that alcohol testing is not required, OR
  - An alcohol test has been completed, OR
  - Eight (8) hours have passed since the accident.
- Covered employees must not show evidence of the use of controlled substances without a valid prescription.
- Refusal by a covered employee to submit a specimen when required by federal regulations will have the same consequences as a positive drug test result, or a breath alcohol test result of 0.04 or greater (see “Discipline” section), and result in the immediate removal of the employee from duty. In addition, refusal of a test after a fatal accident may result in additional penalties under Federal law.

## **INVESTIGATION OF PREVIOUS TESTING**

As a condition of employment, applicants for covered positions or current employees being assigned to a covered position or duties will be required to provide written consent for the County to access DOT Clearinghouse information from DOT regulated employers who have employed the applicant during any period during the three (3) years preceding the date of application or transfer. Records include:

- Names and addresses of previous DOT covered employers;
- Alcohol tests with a result of 0.04 or greater;
- Verified positive drug tests;
- Refusal to be tested (including verified adulterated or substituted drug test results);
- Other violations of DOT agency drug and alcohol testing regulations; and
- If the applicant violated a DOT drug and alcohol regulation, documentation of the applicant’s successful completion of DOT return to duty requirements. (Note: If the previous employer does not have information about the return to duty requirements, the County must seek to obtain this information from the applicant.)

## **Drug and Alcohol Clearinghouse**

Personal information collected and maintained under 49 CFR 382 shall be reported to the Clearinghouse as required. In addition, the Clearinghouse will be accessed as required under

49 CFR 382. The County will provide a “limited query consent form” to all covered employees prior to conducting an annual query search.

Positive drug and alcohol test results received by the County will be entered into the regulated FMCSA Clearinghouse website.

### **TYPES OF DRUG AND ALCOHOL TESTING REQUIRED**

The following are occasions for drug and alcohol testing under this policy:

#### **Pre-employment Testing**

Pre-employment drug testing is required for all covered positions. Applicants who have applied for covered positions will be notified that drug testing is a requirement of the application process.

A diluted specimen result is considered unsatisfactory on a pre-employment test. Applicants will be given one additional opportunity to provide a valid specimen. The result of the second test will determine whether the person is eligible for employment as a covered employee.

A test result which is verified as positive for unauthorized use of controlled substances, or found to be substituted or adulterated, will disqualify the applicant for the covered position.

#### **Random Testing**

Covered employees are required to be randomly tested under DOT regulations.

The County has contracted with an outside testing management service to perform computerized random selections on covered employees. Selections occur monthly on a randomly selected date. Selections are therefore spread reasonably throughout each 12-month period.

A number of drug tests equal to at least 50% of the number of individuals in the program will be completed annually, as required by DOT drug testing regulations; a number of alcohol tests will be completed annually, as required by current DOT regulations.

Procedure for Notification and Specimen Collection/Testing:

- 1) The drug testing management service will maintain a secure database of individuals covered by the FMCSA drug and alcohol testing regulations.
- 2) On a randomly selected date, the service will transmit a list of individuals who have been selected for testing to the DER.
- 3) The DER or their designated representative will notify the individual’s supervisor by email that the employee has been selected to provide a specimen for testing. The date and time of notification will be recorded on the employee instruction card.
- 4) IMMEDIATELY after being notified, each individual selected for testing must proceed to a specimen collection and/or testing facility. If the individual is in a remote location, the DER will arrange for the employee to go to a local clinical facility so that specimen collection and/or testing are completed expeditiously.

#### **Reasonable Suspicion Testing**

“Reasonable suspicion” means that an individual has given a trained supervisor or other responsible manager reason to believe that the employee may be impaired, intoxicated, or under the influence of a controlled substance or alcohol. Examples include, but are not limited to, deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that support the violation of Policy prohibitions.

A reasonable suspicion test will be required when the County has reasonable suspicion to believe that the covered employee has violated the prohibitions of this policy. The County determination that reasonable suspicion exists to require the covered employee to undergo a test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

The "reasonable suspicion" behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any "reasonable suspicion" incident will be documented as soon after the incident as possible and the covered employee's bargaining unit will be provided with a copy of that documentation. The employees involved will be immediately removed from the workplace and escorted by a supervisor to a specimen collection or testing site. The employee will NOT be allowed to proceed to the site unaccompanied. Following specimen collection, the employee will be placed on paid administrative leave until the results have been received by the County. A negative dilute result is considered unsatisfactory on a reasonable suspicion test. The employee will be given one additional opportunity to provide a valid specimen. If the second test is a negative dilute this will be confirmed as a negative test. The result of the second test will prevail.

Employees will have access to union representation if requested at every step of the "reasonable suspicion" testing procedures, except during specimen collection. The County will inform the union representative of the reasonable suspicion that supports the testing requirement. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established collection and testing procedures. A list of qualified union representatives will be provided to the County.

### **Post-Accident Testing**

Employees will be subject to post accident testing when one of the following occurs while driving a commercial motor vehicle:

- 1) A fatality occurred; or
- 2) The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; or
- 3) The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

Employees involved in a reportable accident are required to be:

- Tested for alcohol as soon as possible, but in no case later than 8 hours after the incident.
- Drug tested as soon as possible, but in no case later than 32 hours after the incident.

The County will ensure that the employee involved in a *reportable accident* will be immediately removed from duty, and escorted to a collection/testing site. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established testing procedures.

An employee who is seriously injured and cannot provide a specimen for testing may be requested to authorize the release of relevant hospital reports and other documentation that would indicate

whether there were any controlled substance(s) in the employee's system at the time of the incident.

The County will provide its covered employees with any necessary information and procedures to enable them to meet federal requirements for post-accident testing.

Covered employees are prohibited from using alcohol for eight (8) hours following an accident/crash or until they have undergone a post-accident alcohol test, whichever occurs first.

An alcohol test should be administered within two (2) hours following the accident/ crash. If a test is not conducted within this time period, the County must document the cause for delay. Under no circumstances should testing be conducted beyond eight hours.

A drug test should be administered as soon as possible but no later than thirty-two (32) hours after the occurrence of an accident/crash.

### **Return to Duty and Follow-up Testing**

Return to duty and follow-up drug and/or alcohol testing when a covered employee has engaged in prohibited drug or alcohol-related behavior. A negative drug and/or alcohol test is required prior to return to duty. Follow-up testing may continue for no longer than sixty months following return to duty. The County will comply with any mandated testing requirements outlined by the SAP.

Please refer to "Return to Duty" and "Disciplinary Action" sections for additional information.

### **Costs of Testing**

The County will be responsible for payment of all pre-employment, post-accident, random, and reasonable suspicion tests as well as any requested split tests, return to duty, and follow-up tests with a negative or canceled test result.

The employee will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a positive result.

## **DRUG AND ALCOHOL TESTING PROCEDURES**

### **Drug Testing**

- 1) Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice, using chain of custody procedures specified by DOT regulations (49 CFR Part 40) and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a "primary specimen" shipping bottle and at least 15 mL of urine in a "split specimen" shipping bottle.
- 2) If an employee is unable to provide an adequate volume of urine on the first attempt ("shy bladder"), the employee will have an opportunity to drink up to 40 ounces of fluids for up to three hours. At the end of this period, if no sample of adequate volume has been provided, the employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test per 49 CFR 40.193.
- 3) Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.

- 4) When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Drug Test Results Review” below).

### **Breath Alcohol Testing**

- 1) Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- 2) Breath alcohol tests with results below 0.02 require no further action.
- 3) Tests with results of 0.02 or above will be confirmed as follows:
  - a. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
  - b. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted per 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.
- 4) If the result of the confirmed breath alcohol test is 0.02 or greater, the Breath Alcohol Technician must immediately notify the DER or the employees designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the DER.

## **DRUG TEST RESULTS REVIEW**

Drug test results on a covered employee which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO.

A POSITIVE drug test result is defined as the detection of any one or more of the substances listed in the table shown below.

<b><u>Substance or Class</u></b>	<b><u>Initial Screening Cut-off</u></b>	<b><u>Confirmation Cut-off</u></b>
Amphetamines	500 ng/mL	250 ng/mL
Methamphetamines* MDMA (Ecstasy)*		
Cocaine	150 ng/mL	100 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Opioids		
Codeine/Morphine*	2000 ng/mL	2000 ng/mL
6 Acetylmorphine (Heroin)*	10 ng/mL	10ng/mL
Hydrocodone/Hydromorphone*	300 ng/mL	100 ng/mL
Oxycodone/Oxymorphone*	100 ng/mL	100 ng/mL
Phencyclidine (PCP)	25 ng/mL	25 ng/mL

- \* Acts as "metabolites" tested under the main substance or class.
- Drug testing cutoff levels are the minimum concentrations of drugs or metabolites that must be present in specimens, before labs will report the drug testing results as positive.

A confirmed positive test from a certified laboratory does not automatically identify an employee or applicant as having used drugs in violation of a DOT regulation. The MRO brings detailed knowledge of possible alternate medical explanations to their review of the test results. This review is performed by the MRO prior to the transmission of results to the County.

### **MRO Reporting Options and Employer Actions**

- "Negative" – Confirmed negative results from MRO.
- "Negative Dilute" – Upon receipt of a "negative dilute," the employee and/or applicant shall be required to immediately provide another specimen. In the event the second test result is "negative dilute," no further action will be taken and the second test shall become the test of record. If the employee and/or applicant is directed to take a second test and the employee and/or applicant declines to do so, this is a "Refusal to Test" under this policy and DOT regulations.

- “Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate collection of another specimen, under direct observation, with no advance notice to the donor.
- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” No further action required unless a “Negative” test result is required for pre-employment, return to duty, or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.
- “Cancelled Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required.” The employer is not required to take any further action unless a “negative result is required (i.e., pre-employment, return to duty, or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.
- “Positive or Positive Dilute” – The employer must comply with the requirements for a positive test under the regulations.
  - Immediately remove employee from safety-sensitive functions; and
  - Referral to a SAP – If the employee is terminated, they will be furnished with a list of SAP resources (names, addresses, and telephone numbers).
  - Return to Duty provisions must be followed.
- “Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.
- “Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

### **MRO Verification Without Notifying the Employee**

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO;
- The MRO has successfully made and documented a contact with the employee, and instructed the employee to directly contact the MRO, and more than 72 hours have passed since the time the MRO contacted the employee.

If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of the employee’s specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the test.



### **Communication of Results**

The MRO or their designated representative will report test results ONLY to the County's Designated Employee Representative who shall notify the employee's Director or their designee. Confidentiality will be strictly maintained. If the result is positive, the MRO or their authorized representative will report the identity of the controlled substance.

Employees and applicants may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

### **RECORD KEEPING PROCEDURES**

The County's DER will maintain drug/alcohol testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.

An employee is entitled, upon written request, to obtain copies of any records concerning their use of alcohol or controlled substances. Requests for such information may be directed to the DER.

The County shall release information regarding a covered employee's records to a subsequent employer upon receipt of a specific written request, by the covered employee, authorizing release of the records to an identified person.

Information regarding an individual's test results or rehabilitation is considered to be personal and confidential and may be released only upon written consent of the individual, except:

- 1) Such information must be released to the Secretary of Transportation, any DOT agency, such as the Clearinghouse, or any state or local officials with regulatory authority over the employer or any of its employees.
- 2) Such information may be disclosed in a lawsuit, to the employee's official representative with the employee's signed authorization, to other individuals as may be required by law, or other proceeding initiated by or on behalf of the covered employee and arising from a verified positive test or from the County's determination that the employee engaged in conduct prohibited by FMCSA regulations.
- 3) When requested by the National Transportation Safety Board as part of an accident investigation, the County will disclose information regarding post-accident testing.

Under the County's independent authority,

- 4) Such information may not be released to any state official with specific regulatory authority over the County unless legally required.
- 5) When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
- 6) The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.

## Record Retention

The following schedule of record keeping will be maintained by the DER and their authorized agents:

•	Negative and canceled drug test records; records of alcohol test results less than 0.02	1 year
•	Information obtained from previous employers	3 years
•	Records of supervisor training	Indefinite or 2 years beyond job responsibilities
•	Records of verified positive drug test results; alcohol test results of 0.02 or greater; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules	5 years
•	Documentation of EBT calibration; Custody Control Forms; Specimen collection/alcohol test records	2 years
•	Calendar year record of total number of employees tested and the results of tests	5 years

## **SERVICE PROVIDERS**

**The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the County with the following provisions:**

### **DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE**

The County will maintain an agreement with a drug and alcohol testing management service to advise the County on processes, developments, and changes concerning this Policy.

The firm chosen will be responsible for overseeing compliance of agents of the County with applicable federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and (MROs). It also submits blind specimens on behalf of the County, and maintains records as required by applicable federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by Risk Management and communicated with departments who have CDL holders.

### **MEDICAL REVIEW OFFICERS**

MRO services will be provided by the testing management service.

### **DRUG TESTING LABORATORIES**

The County will use drug testing laboratories which are SAMHSA-certified, as required by federal drug testing regulations. The County drug testing management service may arrange for the services of a drug testing laboratory in order to best serve the interests of the County.

### **SUBSTANCE ABUSE PROFESSIONALS**

Under this Policy, employees who refuse testing, have confirmed positive alcohol test results, and/or have MRO verified positive drug test results must be referred by the DER to a SAP for evaluation. The County will maintain a list of such qualified individuals in its geographic area and make this list available to employees as needed.

## LAST CHANCE AGREEMENT – EXAMPLE

[This attachment is an example of a last chance agreement form that may be used. The form may vary to fit the facts and circumstances of a particular situation.]

This is an agreement (Agreement) between [employee's name] (Employee); the Clackamas County [department] (Department), and the Clackamas County [union] (Union).

1. This Agreement serves as notice to the Employee as to what to expect for continued employment with the Department. This Agreement does not guarantee employment for any specific period
2. The Employee agrees to continue in a bona fide drug and/or alcohol [tailor to each case] outpatient rehabilitation program recommended and approved by a qualified Substance Abuse Professional (the Counselor). The Employee fully understands that they are to remain in such a program, including any required aftercare, until released in writing by the Counselor. For **[period of time]** from the date of this Agreement, the Department shall have the right to conduct random breath alcohol or urinalysis testing of Employee on work time at the expense of the Department. Should Employee refuse to cooperate with said breath alcohol or urinalysis, test positive for alcohol/drugs, or abuse prescription medication while on the job, Employee will be in violation of this Agreement and shall be subject to termination. A violation of this Agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
3. The Employee agrees to grant permission to the Counselor to release verification to the Department that the Employee is meeting and has completed the requirements of the program and any required aftercare. If the Employee discontinues the program without the consent of the Counselor or is terminated from the program by the Counselor, the Employee will be considered in violation of this Agreement.
4. The Employee agrees that this Agreement constitutes a final warning and that any violation of County policy or non-compliance with the terms of this Agreement while the Agreement is in effect shall be considered just cause for discharge and shall result in loss of employment. In the event the termination is grieved and submitted to arbitration, the arbitrator's authority will be limited to determining whether there was or was not a violation of County policy or this Agreement. In the event the arbitrator finds there was a violation of County policy or this Agreement, that violation will automatically be considered "just cause" for termination. The parties agree to enter into a factual stipulation so limiting the scope of the issue and the arbitrator's authority.
5. Except as stated in this Agreement, the terms and conditions of the Employee's work shall be the same as all other employees in the applicable bargaining unit.
6. The Union and the employee agree that this resolution is in lieu of termination [and in addition to specified discipline] of Employee and that the Agreement resolves all disputes related to proposed discipline. The Employee and the Union agree not to challenge this Agreement as proper under just cause or any other provision of the collective bargaining agreement or any other legal challenges in any forum.
7. This is the complete agreement between the parties who sign knowingly and of their own free will, after seeking advice of counsel.
8. The contents of this Agreement related to the Employee's involvement in alcohol/drug treatment and testing and placement on a "last chance agreement" shall be maintained in confidence and strictly on a "need to know" basis by the parties. Such information may not be released to any

state official with specific regulatory authority over the Department of Clackamas County, unless legally required.

9. This Agreement does not set future precedent between the Department and the Union and shall not be used as evidence of waiver of rights by the Union or the Department in any future disputes between the parties.

\_\_\_\_\_  
[Employee's name]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clackamas County [Collective Bargaining Unit]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clackamas County [Department]

\_\_\_\_\_  
Date

**DRUG AND ALCOHOL – COMMERCIAL DRIVER’S LICENSE AND RELATED FUNCTIONS**

**CERTIFICATE OF RECEIPT**

I, the undersigned covered employee of Clackamas County, hereby certify I have received a copy, read, and fully understand the written policy and procedure related to the Federal Highway Administration rules and regulations pertaining to drug and/or alcohol testing of individuals who have a Commercial Driver’s License and/or who hold a Maritime License. I also understand a copy of this certificate will be placed in my personnel file.

Name (print): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_