

ADDENDUM 1

DRUG AND ALCOHOL TESTING POLICY

Clackamas County Sheriff's Office Peace Officers Association Employees

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5.31 DRUG AND ALCOHOL POLICY

Clackamas County Sheriff's Office

5.31.1 POLICY STATEMENT

The Clackamas County Sheriff's Office (CCSO) is strongly committed to providing a safe and drug-free workplace.

The CCSO recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome an alcohol or drug dependency problem (see "Employee Assistance Program and Self-Referral").

The Drug and Alcohol Testing Policy is intended to be consistent with and enhance the Clackamas County Employment Policy and Practice #5 - Drug Free Workplace Act and Policy Proclamation.

5.31.2 EDUCATION AND TRAINING

The CCSO will distribute information to employees regarding the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; drug and/or alcohol counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

At the time of hire, new employees will receive a copy of the Drug and Alcohol Policy, which informs them of their responsibilities with respect to compliance with this Policy.

Persons who may be required to make "reasonable suspicion" recommendations or 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, with additional follow up training to be provided, to maintain and increase proficiency.

5.31.3 EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL

Any employee may voluntarily request assistance in dealing with a personal drug and/or alcohol problem through the Employee Assistance Program (EAP) or other acceptable treatment program. Utilization of the EAP is confidential and an employee's utilization of the EAP will not be made known to the Sheriff's Office or the County unless the employee voluntarily chooses to share that information. However, voluntary self-referral for alcohol and/or illegal drug use is not in itself a "safe haven." The guidelines listed below will apply to self-referrals.

A. Any employee not currently under personnel investigation who voluntarily requests assistance in dealing with a personal alcohol and/or drug problem, may do so without jeopardizing his or her employment, if the alcohol and/or drug of abuse was originally prescribed to, or legally obtained by the employee, but was later abused by the employee. For the purpose of this section, a personnel investigation commences when the Sheriff's Office begins collecting information that leads to the employee being instructed to report for drug and/or alcohol testing.

B. Participation in the EAP or other acceptable treatment program will not, in itself, jeopardize an employee's job, and successful treatment will be viewed positively. However, participation in the EAP or treatment program will not prevent the CCSO from imposing discipline for conduct that occurs in conjunction with alcohol and/or drug use in violation of Sheriff's Office Policy, and will not relieve an employee from the responsibility to perform assigned duties safely and at a satisfactory performance level.

5.31.4 DRUG EVALUATION; LEAVE OF ABSENCE

An employee may be required to undergo an evaluation by a Substance Abuse Professional (SAP) approved by the Sheriff's Office if he or she is involved in an alcohol and/or drug related incident on or off-duty. This evaluation will determine the extent of any alcohol and/or drug problem and the appropriate treatment. The employee may then be required to participate in, and successfully complete, an alcohol and/or drug education and treatment program as recommended by the SAP in lieu of disciplinary action, as set forth in a Last Chance Agreement. Any cost of such an evaluation not covered by the employee's medical insurance shall be paid by the Sheriff's Office. The cost of the substance abuse treatment will be the responsibility of the employee if not covered by the employee's insurance. Substance abuse evaluation and treatment will be in addition to any disciplinary action taken.

Absences due to alcohol and/or drug abuse evaluation or treatment may be covered by an employee's sick leave or vacation leave. If no such paid leave is available, an unpaid leave of absence may be used according to the County's regular Policy for unpaid leave of absence.

Return to duty, after an employee has been on leave required by this Policy for evaluation or treatment of an alcohol and/or drug problem, will be allowed only in compliance with the recommendations of the SAP.

5.31.5 PRESCRIPTION AND OVER-THE COUNTER MEDICATIONS

Prescription and over-the-counter medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Employees are prohibited from reporting to work, working or returning to duty with medications that could reasonably be expected to impair their ability to safely perform their job duties. Employees are also prohibited from reporting to work with medications containing controlled substances in accordance with section 5.31.6. Employees should ask their physicians for specific instructions as to how much medication they should take, what combinations of medications they should take and when they should take medications to ensure safe use

relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Employees must report the use of medically prescribed drugs or other substances which could reasonably be expected to impair job performance. It is the employee's responsibility to determine from their physician whether the prescribed drug could reasonably be expected to impair his or her job performance, including the ability to operate a motor vehicle. An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication(s) with his/her doctor in relation to job duties; the type of medication(s); beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with Sheriff's Office management will then determine whether to require written medical authorization to work from a prescribing health care practitioner or if any other actions are necessary.

Management will restrict access to medical information to the DER, the Sheriff, Undersheriff or person appointed to fulfill the duties of the Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto County property/premises, including vehicles must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription 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 to treat medical conditions when supported in writing by a licensed medical doctor and certain conditions have been met and for limited recreational use, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and 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 or recreational use that complies with state law.

In addition, possession of marijuana on County property is grounds for discipline up to and including dismissal.

5.31.6 PROHIBITIONS

The following conduct is prohibited:

- A. Buying, selling, consuming, distributing or possessing unlawful drugs or alcohol while working or engaged in work activities on behalf of the County, or while on

County premises or in County vehicles, except as necessary in the performance of duties (under-cover operations, confiscated evidence, etc.)

- B. Reporting for work, working or returning to duty with drugs or alcohol present in the body at the levels set forth below. For the purpose of this Policy, “drugs” include all controlled substances regulated under the federal Controlled Substances Act.
- C. Failing to promptly report arrests, convictions and/or plea-bargains for an alcohol or drug-related criminal offense to the Undersheriff or his/her designee, irrespective of the jurisdiction where such action was taken.
- D. Refusal by an employee to submit a urine specimen and/or breath alcohol sample when required by this Policy will have the same consequences as a positive drug and/or alcohol test result (see “Discipline” section). It will warrant immediate removal of the employee from duty.
- E. Failing to comply with directives regarding enforcement of this Policy, including but not limited to refusing to promptly submit to required testing; giving false, diluted or altered samples; obstructing the testing process and failing to comply with rehabilitation conditions imposed by the County or rehabilitation counselors pursuant to this Policy.
- F. Engaging in any other violation of this Policy.

Positive Test Levels for Drugs and Alcohol

A positive drug test result is defined as the detection of any one or more of the substances and/or metabolites of the substance listed in the table shown below:

Substance or Class	Screen Cut-off	Confirmation Cut-off
Amphetamines	500 ng/mL	250 ng/mL
Benzodiazepines	200 ng/mL	200 ng/mL
Cocaine	150 ng/mL	100 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Methadone	300 ng/mL	200 ng/mL
Opiates <i>Codeine/Morphine</i> <i>Hydrocodone,</i> <i>Hydromorphone,</i> <i>Oxymorphone</i> <i>Fentanyl</i>	300 ng/mL	2000 ng/MI 150 ng/mL **LOQ 2 ng.mL
6 Acetylmorphine (Heroin)	10 ng/mL	10 ng/mL
PCP	25 ng/mL	25 ng/mL

**** Limit of Quantity**

An employee will be considered in violation of prohibitions against reporting to work or working with alcohol in his/her system if his/her breath tests .01 g/210L or higher. A separate test, as provided by 5.31.10 Breath Alcohol Testing B2, must be conducted to enforce the .01 or greater BAC standard.

It is not the intent of this Policy to test for medications that are lawfully prescribed by a healthcare provider and used in accordance with the prescription. Employees who are taking medications, including medications containing controlled substances, should refer to the "Medications" section above for an explanation of their obligations. See 5.31.5.

Employees who engage in any prohibited conduct may be subject to discipline, including discharge.

5.31.7 CALLBACK DUTY

It is recognized that employees may be recalled to duty during normal off duty hours. When operational need dictates the necessity to recall these employees, caution and good judgment must be exercised. The employee is required to notify the supervisor requesting the callback of the side effects of any prescription drug or over-the-counter medication and, if requested, the name of the medication, as well as that could impair his/her ability to safely perform job duties and to receive the supervisor's approval before responding to the callback. Similarly, employees who have consumed alcoholic beverages within four (4) hours of a requested callback or, for any reason, believe they could be impaired by the consumption of alcohol, are required to notify the supervisor and obtain approval before responding to the callback.

5.31.8 TYPES OF DRUG AND ALCOHOL TESTING REQUIRED

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

Reasonable Suspicion Testing

An employee may be required to submit to a drug and/or alcohol test upon reasonable suspicion that the employee has violated the prohibitions of this Policy concerning alcohol and/or controlled substances. The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, or body odors of the employee or other articulable observations of an employee's condition or performance that indicate possible drug or alcohol use. 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. Poor attendance or tardiness alone or in combination do not constitute reasonable suspicion. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that supports the violation of Policy prohibitions.

The “reasonable suspicion” behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the drug and/or alcohol test may rely on the observation and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. 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 CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. A negative dilute result is unsatisfactory on a reasonable suspicion test for drugs. The employee will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail. However, employees remain subject to discipline up to and including discharge, for giving intentionally altered samples.

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.

Return to Duty and Follow-up Testing

Unless the employee is discharged, CCSO shall require return to duty and follow-up testing as recommended by the SAP when an employee has engaged in prohibited drug or alcohol-related behavior or violation of the prescription medication provisions of this Policy. A negative alcohol or drug test is required prior to return to duty and at least six (6) unannounced follow-up tests are required during the twelve (12) months following return to duty. Any recommendations by the SAP shall be followed, but follow-up testing may continue for no longer than sixty months following return to duty.

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

5.31.9 COSTS OF TESTING

The County will be responsible for payment of all reasonable suspicion, return to duty, and follow-up tests that are required by the County.

The employee will be responsible for payment of any requested split tests or other tests that he/she voluntarily undergoes without being required to do so by the County. The County will initially pay for the test and then collect reimbursement from the employee.

5.31.10 DRUG AND ALCOHOL TESTING PROCEDURES

Testing procedures for all employees are governed by the same standards as apply to commercial driver license holders under federal law, with the exception of forms required by the United States Department of Transportation (DOT) for CDL drivers. These standards include, but are not limited to, those governing sample acquisition, the chain of custody, laboratory selection, testing methods and procedures, and verification of test results.

Drug Testing:

- A. Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice 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.
- B. If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she 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 as outlined in 49 CFR 40.193.
- C. 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.
- D. 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 “Prohibited Conduct”).

Breath Alcohol Testing:

- A. 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.
- B. A positive test will be confirmed as follows:
 - 1. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.

2. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted as described in 49 CFR Part 40. The result is recorded in the "Confirmation Test Results" section of the Alcohol Test Form.
- C. If the result of the confirmed breath alcohol test is positive, the Breath Alcohol Technician must immediately notify the DER or his/her 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 Designated Employer Representative.
- D. Under this Policy, an employee with a confirmed positive breath alcohol test at the levels set forth in the "Prohibited Conduct" section of this Policy shall be considered to be in violation of this Policy.

5.31.11 DRUG TEST RESULTS REVIEW

Drug test results on an employee which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO. A confirmed positive test does not automatically identify an employee as having used drugs in violation of this Policy. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the DER.

Medical Review Officer Reporting Options and Employer Actions

- "Negative" – self-explanatory
- "Negative Dilute" – Upon receipt of a "negative dilute," the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the DER, Supervisor, or other designated person. 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 is directed to take a second test and the employee declines to do so, this is a "Refusal to Test".
- "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 reasonable suspicion, 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., reasonable suspicion, 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 as outlined in this Policy.
 - Immediately remove employee from duty; and
 - Referral to a SAP – If the employee is terminated, he/she is to 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; and
- The MRO has successfully made and documented a contact with the employee and instructed the employee to directly contact him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

NOTE: 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 him/her 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 his/her 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 entire test.

Communication of Results

The MRO or his/her designated representative will report test results ONLY to the County's DER who shall notify either the Sheriff, Undersheriff or person appointed to fulfill the duties of Sheriff or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance and other information, as necessary for the County to determine whether the employee has violated this Policy.

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

This policy shall not limit either the County or the Association from obtaining and sharing information, as they deem necessary, to respond to grievances and other legal actions or disclose information and documents, as compelled by law.

5.31.12 DISCIPLINARY ACTION

- A. Any employee found to be in violation of this Drug and Alcohol Policy will be placed on administrative leave pending the results of testing and/or investigation, and is subject to discipline, up to and including discharge. Violations of this Policy may differ in terms of seriousness, the employee's prior record of violation and/or compliance and other factors consistent with "just cause" obligations. Employees may result in:
- Verbal and written reprimands
 - Suspension or demotion
 - Termination of employment
 - Last chance agreements in lieu of termination

The CCSO may also initiate a criminal investigation and prosecute.

- B. Employees who have voluntarily requested assistance concerning drug and/or alcohol problems and/or voluntarily entered into drug or alcohol evaluation and treatment programs shall have their actions taken into consideration as set forth in section 5.31.3.
- C. Positive Alcohol or Drug Test. Positive alcohol and drug tests are considered a serious infraction and will generally subject an employee to discharge or last chance agreement.
- D. Misuse or Other Medication Violations. An employee who has tested positive for the presence of drugs which were originally legally prescribed but may have been abused by the employee may be referred to an employee assistance program or SAP for drug counseling or treatment. As an alternative to dismissal and at the discretion of the Sheriff, the employee may be subjected to a last chance agreement as a condition of continued employment, which shall include a requirement that the employee submit to unannounced drug testing if recommended by a SAP, for a period of time recommended by the SAP. The last chance agreement will also include authorization for the County to receive information necessary to assure compliance with the last chance agreement and assure future compliance with this Policy. If the employee violates the terms of treatment or rehabilitation, again tests positive or otherwise violates the last chance agreement during such period, he/she may be discharged, following fulfillment of any Loudermill due process obligations and as otherwise provided in the Last Chance Agreement.

If the level of discipline allows an employee to return to duty, he/she must agree to the following conditions:

- Meet all recommendations/requirements of the SAP.
- In the event the SAP does not specify any follow up testing, employee shall undergo up to six (6) periodic, but unannounced, alcohol tests at the discretion of the DER within one (1) year of returning to duty.
- Any confirmed positive alcohol or verified positive prescription drug abuse result while the employee is undergoing required return to duty or follow-up treatment and/or testing shall result in termination.

5.31.13 RETURN TO DUTY PROCEDURES

Employees who have violated this Policy may only return to duty if the level of discipline allows it and the County has determined them eligible. The following statements reflect the return to duty and follow-up testing requirements of this Policy:

- A. Employees who have had a confirmed positive alcohol test or have abused prescription drugs must be evaluated, undergo treatment, if required, and be determined fit for return to work by the Substance Abuse Professional.
- B. Employees may be subject to periodic unannounced follow-up testing as determined by the Substance Abuse Professional who evaluated the employee. If the employee was found to need assistance in resolving his/her substance misuse problem, a minimum of six (6) such follow-up tests must be conducted during the twelve (12) months following the employee's return to duty.

5.31.14 RECORD KEEPING PROCEDURES

- A. The County's DER will maintain alcohol/drug testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.
- B. An employee is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER, SAP, or to the County drug testing management service.
- C. Information regarding an individual's alcohol/drug 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 may be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel when legally required.
 - 2. Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from an alcohol test and/ or a drug test.

- 3. When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
 - 4. The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.
- D. The County shall release information regarding an employee's records to a subsequent employer upon receipt of a specific written request from the employee authorizing release of the records to an identified person.
- E. Record Retention.

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

Negative and canceled drug test records; alcohol test results less than 0.01 g/210L	1 year
Records of supervisor training	Indefinite or 2 years beyond job responsibilities
Records of verified positive alcohol/drug test results; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules	5 years

5.31.15 INFORMATIONAL RESOURCES

Information on this Policy and associated procedures is available by contacting the DER as outlined on the Intranet at:

<http://web1.clackamas.us/des/drugtesting.html>

Questions may also be addressed directly to the County's drug testing management service.

5.31.16 COMMERCIAL DRIVERS LICENSE DUTIES

Employees performing jobs requiring a commercial drivers' license will also be required to comply with the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations, (see separate Policy for DOT drivers).

ATTACHMENT A

DEFINITION OF TERMS

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

Abuse/Misuse of Prescription Drugs: The use of a drug not in accordance with the prescribed dosage or method of use.

Adulterated Specimen: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol: Ethyl alcohol or ethanol.

Alcohol Screening Device (ASD): A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

Breath Alcohol Technician (BAT): An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using 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.

CCSO: Clackamas County Sheriff's Office

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 of their urine to be analyzed for the presence of drugs.

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

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. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

Controlled Substances: Substances listed on Schedules I through V in 21 U.S.C. 802 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.

County: Clackamas County and/or Clackamas County Sheriff's Office

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 this Policy.

Dilute Specimen: – A specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT: United States Department of Transportation

Drugs: Controlled Substances.

FHWA: Federal Highway Administration

FMCSA: Federal Motor Carrier Safety Administration

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

Medical Review Officer (MRO): A licensed Doctor of Medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

Negative Drug Test: A test 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 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: Under this Policy, an employee is “on duty” when he/she is at work and ready to perform employment functions.

Positive Drug Test: A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by this Policy.

Confirmed Positive Drug 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.

Verified Positive Drug 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.

Prohibited Drugs: Marijuana, Cocaine, Opiates, Phencyclidine (PCP), Amphetamines, Benzodiazepines, Methadone, 6 Acetylmorphine (Heroin). (see Urine 8 Drug Panel)

Reasonable Suspicion: (5.31.8) The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, or body odors of the employee or other 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 urine specimen after receiving notice of the requirement to be tested in accordance with this Policy.

Safety Sensitive Positions: All sworn law enforcement positions, all positions regularly stationed at the Jail, and medical examiners.

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 urine 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): Under DOT regulations, individuals who may serve as substance abuse professionals include:

- 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.

Under this Policy, the DER must inform employees who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

Substituted Specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

ATTACHMENT B

The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office 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 the DER and communicated with the Peace Officers Association.

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 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.

ATTACHMENT C

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 between [employee's name] (the Employee); the Clackamas County Sheriff's Office and Clackamas County (the Sheriff), and the Clackamas County Peace Officers' Association (the Association).

1. This agreement serves as notice to the Employee as to what to expect for continued employment with the Sheriff. 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 counselor (the Counselor). The Employee fully understands that s/he is 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 Sheriff shall have the right to conduct random breath alcohol or urinalysis testing of **[employee's name]** on work time at the expense of the Sheriff. Should the employee refuse to cooperate with said breath alcohol or urinalysis, or test positive for alcohol/drugs or abuse prescription medication while on the job, s/he shall be subject to termination under the Association contract. A violation of the last chance 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 County 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, s/he will be considered in violation of the last chance agreement. A violation of the last chance agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
4. The Employee agrees that this last chance agreement constitutes a final warning and that any violation or non-compliance with its terms within **[x]** years, 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 the Last Chance Agreement. In the event the arbitrator finds there was a violation of the 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 Association bargaining unit.
6. The Association and the employee agree that this resolution is in lieu of termination [and in addition to specified discipline] of **[employee's name]** and that the agreement resolves all disputes related to proposed discipline. The Employee and the Association 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 in 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 Sheriff's Office or law enforcement personnel, unless legally required.
9. This agreement does not set future precedent between the Sheriff and the Association and shall not be used as evidence of waiver of rights by the Association or the Sheriff in any future disputes between the parties.

[Employee's name]

Date

Clackamas County Peace Officers Association

Date

Clackamas County

Date

ADDENDUM 2

DOT DRUG AND ALCOHOL TESTING POLICY

Clackamas County Sheriff's Office
Employees covered by US DOT Regulations

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DRUG AND ALCOHOL TESTING POLICY

Clackamas County Sheriff's Office Employees covered by US DOT Regulations

POLICY STATEMENT

The Clackamas County Sheriff's Office (CCSO or "the County") is strongly committed to providing a safe, drug-free workplace. In addition, an employee substance abuse testing program is mandated for all entities regulated by the Department of Transportation (DOT). For these reasons, the CCSO has implemented a substance abuse testing Policy which applies to all applicants for, and employees who hold "covered driver" positions.

The Sheriff's Office recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome a drug dependency problem (see "Employee Assistance Program and Self-Referral").

This Drug and Alcohol Testing Policy ("Policy") is intended to comply with DOT regulations, changes which will supersede specific Policy provisions. To view revisions to this Policy made by the Federal Motor Carrier Safety Administration (FMCSA) or the Federal Highway Administration (FHWA) since this publication, and additional information, go to:

<http://web1.clackamas.us/des/drugtesting.html>

EFFECTIVE DATE: February 1, 2011 **POLICY REVISED:** April 2018

WHO WILL BE TESTED AND WHEN

Covered drivers are defined as those who are required to hold commercial driver's licenses for their jobs. Such applicants and employees fall under the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations ("Controlled Substances and Alcohol Use and Testing," 49 CFR Part 382). Generally, covered drivers are operators of commercial motor vehicles which 1) are greater than 26,000 pounds GVWR, 2) carry hazardous materials in placardable quantities, or 3) carry 16 or more passengers, including the driver.

Covered drivers may be tested for drugs or alcohol whenever they are on duty.

For the purposes of this Policy, "on duty" is defined as any time an individual is on the job and ready to perform safety-sensitive functions. Performing a safety-sensitive function means any period in which the driver is actually operating, preparing to operate, or immediately available to operate a vehicle requiring a Commercial Driver License. Time spent in association with drug testing specimen collection and/or alcohol testing shall be considered "on-duty" time.

EDUCATION AND TRAINING

The CCSO will distribute information to employees on the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; and drug counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

When deputies are assigned duties that involve driving vehicles requiring a Commercial Driver License (CDL) they will receive specific information regarding the CCSO's Drug and Alcohol Testing Policy and be informed of their responsibilities with respect to compliance with federal drug and alcohol testing regulations.

Employees (see 5.31.8) 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, with additional follow up training to be provided, to maintain and increase supervisory proficiency.

EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL

When a covered driver voluntarily reports a drug/alcohol problem BEFORE it is discovered through a drug or alcohol test, he/she will immediately be removed from driving duties.

Under the County's independent authority, employee assistance for self-referral will be handled as described in the Sheriff's Office Drug and Alcohol Policy.

PRESCRIPTION MEDICATIONS

Prescription medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Covered drivers should 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. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Under the County's independent authority, all covered drivers are specifically 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). An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication with his/her doctor in relation to job duties; the type of medication; beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with CCSO Management will then determine whether to require

written medical authorization to work from a prescribing health care practitioner or if any accommodations are necessary.

The County will restrict access to medical information to the DER, the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto the CCSO property/premises must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription 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 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 to treat medical conditions when supported in writing by a licensed medical doctor, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and 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.

In addition, possession of marijuana on county property is grounds for dismissal.

PROHIBITIONS

FMCSA REGULATIONS SPECIFY the following prohibitions:

- 1) Covered drivers must not use alcohol within four (4) hours prior to reporting for duty (“pre-duty use”).
- 2) Covered drivers 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 also “Discipline”)
- 3) Covered drivers are prohibited from using alcohol after an on-the-job accident until:
 - a. The DER or his/her designated alternate has determined that alcohol testing is not required, OR
 - b. An alcohol test has been completed, OR
 - c. Eight (8) hours have passed since the accident.
- 4) Covered drivers must not show evidence of the use of controlled substances without a valid prescription.

¹ Breath testing results are given in grams of alcohol per 210 liters of breath (g/210L)

- 5) Refusal by a covered driver to submit a urine, saliva or breath 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 more severe penalties under Federal law.

INVESTIGATION OF PREVIOUS TESTING

As a condition of employment, applicants for covered driver positions or current employees being assigned covered driving duties will be required to provide written consent for the CCSO to obtain the following 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:

- 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 CCSO must seek to obtain this information from the applicant.)

The County must ask the applicant or employee being assigned covered driving duties whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which they applied for, but did not attain, a DOT-regulated safety-sensitive transportation position during the three (3) years preceding date of application. (If they admit that he/she had a positive test or refusal to test, they must document successful completion of the return to duty process.)

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 driver positions. Applicants and/or current employees being assigned covered driving duties will be notified that drug testing is a requirement of the application process.

Under the County’s independent authority, and as permitted by the DOT, a negative dilute result is unsatisfactory on a pre-employment test. Applicants and/or current employees being assigned covered driving duties 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 driver.

A drug test result which is verified as positive for unauthorized use of controlled substances, or found to be substituted or adulterated, will disqualify the applicant and/or current employee being assigned covered driving duties for the covered driver position.

Random Testing

Definition of Random Test. A random test is a test that is unannounced, and where every person in the random selection “pool” has an equal chance of being selected for testing each time a selection occurs. Random testing is considered to be an effective deterrent to substance abuse. Covered drivers are required to be randomly tested under DOT regulations.

Method of Random Selection: The County has contracted with an outside drug testing management service to perform computerized random selections on its 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 data base of individuals covered by the Federal Highway Administration’s 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 his/her designated representative will notify the individual in person or by telephone that he/she has been selected to provide a urine and/or breath 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 alcohol testing facility. If the individual is in a remote location, the DER will arrange for him/her to go to a local clinical facility so that specimen collection and/or breath testing are completed expeditiously.

Reasonable Suspicion Testing

“Reasonable suspicion” means that an individual has given a supervisor or other responsible manager reason to believe that he/she may be impaired, intoxicated, or under the influence of a controlled substance or alcohol.

A reasonable suspicion test will be required under the following conditions:

- 1) The CCSO shall require a driver to submit to an alcohol test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning alcohol. The CCSO's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
- 2) The CCSO shall require a driver to submit to a controlled substances test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning controlled substances. The CCSO's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

The "reasonable suspicion" behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the test may rely on the observation of and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. 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 CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. UNDER THE COUNTY'S OWN AUTHORITY, and as permitted by the DOT, a negative dilute result is unsatisfactory on a reasonable suspicion test. The employee will be given one additional opportunity to provide a valid specimen. 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

A reportable accident under Federal Highway Administration regulations is defined as an accident in which a covered driver was operating a commercial motor vehicle and in which:

- 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.

UNDER FMCSA REGULATIONS, 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 CCSO 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. A list of qualified union representatives will be provided to the County.

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 his/her system at the time of the incident.

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

Covered drivers 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, but no later than 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

FMCSA regulations require return to duty and follow-up drug and/or alcohol testing when a covered driver 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 CCSO will comply with any mandated testing requirements outlined by the SAP.

Please refer to “Return to Duty Procedures “and” Disciplinary Action and Procedures” for additional information.

Costs of Testing

The County will be responsible for payment of all pre-employment, pre-duty, post-accident, random, and reasonable suspicion tests.

The County will be responsible for payment of 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. The County will pay for the test and then collect from the employee.

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”), he/she 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”).

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 his/her 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 driver 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.

<u>Substance or Class</u>	<u>Initial Screening Cut-off</u>	<u>Confirmation Cut-off</u>
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
Opiates	2000 ng/mL	2000 ng/mL
Codeine/Morphine	2000 ng/mL	2000 ng/mL
6 Acetylmorphine (Heroin)	10 ng/mL	10 ng/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

- *Methamphetamines, MDMA (Ecstasy), Codeine/Morphine and 6 Acetylmorphine (Heroin) all act 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 his/her 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” – self explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the DER, Supervisor, or other designated person. 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 is directed to take a second test and the employee declines to do so, this is a “Refusal to Test” under the 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, he/she is to 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 him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

NOTE: 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 him/her 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 his/her 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 his/her designated representative will report test results ONLY to the County’s Designated Employee representative who shall notify either the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her 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.

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 discharge. Any covered driver 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.

DISCIPLINARY ACTION AND PROCEDURES

- 1) An otherwise qualified applicant for a covered driver position whose drug test results are negative and who has documented satisfactory participation in a previous employer’s drug and alcohol testing program, will be considered qualified for the position offered. Applicants with verified positive drug test results will be considered ineligible for the position.

- 2) Any covered driver found to be in violation of this Drug and Alcohol Testing Policy will be removed from duty and will be subject to progressive discipline, up to and including discharge. Violations include:
 - a. Alcohol possession or use in violation of the prohibitions stated in this Policy (e.g. pre-duty, post-accident; see pages 6 and 7)
 - b. An alcohol test result of 0.04 or greater
 - c. A verified positive drug test result
 - d. Refusal to test or to cooperate

- 3) A covered driver determined to have evidence of alcohol in his/her system in the range of 0.02 – 0.039 will be subject to progressive discipline.
 - a. On any occasion in which a covered driver has a breath alcohol test result of 0.02 or greater, but less than 0.04, he/she 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. These occasions will be considered violations of this Policy, and will subject the employee to progressive discipline.

- 4) Covered drivers 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) **ALCOHOL RESULT OF 0.04 OR ABOVE**
Under the County's independent authority, any covered driver who has had a **confirmed alcohol result of 0.04** or above shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.

- 6) **POSITIVE DRUG TEST**
Under the County's independent authority, any covered driver who has had a verified positive drug test shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.

RETURN TO DUTY PROCEDURES

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

- 1) Covered drivers 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 driving functions.

- 2) Covered drivers 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 driving functions.
- 3) Covered drivers 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 drivers 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.

RECORD KEEPING PROCEDURES

The CCSO’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.

A driver is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER or to the County drug testing management service.

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

Information regarding an individual’s drug 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, or any state or local officials with regulatory authority over the employer or any of its drivers.
- 2) Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered driver and arising from an alcohol test and/or a verified positive drug test or from the CCSO’s determination that the driver engaged in conduct prohibited by FMCSA regulations.
- 3) When requested by the National Transportation Safety Board as part of an accident investigation, the CCSO will disclose information regarding post-accident alcohol and/or drug testing.

Under the County’s independent authority,

- 4) Such information may not be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel 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 his/her 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 |

SUPPLEMENT A

DEFINITION OF TERMS

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

Abuse/Misuse of Prescription Drugs: The use of a drug not in accordance with the prescribed dosage or method of use.

Accident:

Reportable accident (covered drivers): 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.

Adulterated Specimen: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol: Ethyl alcohol or ethanol.

Alcohol Screening Device (ASD): 49 CFR 40.3 – A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

Breath Alcohol Technician (BAT): An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using 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.

CCSO: Clackamas County Sheriff's Office

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 of their urine to be analyzed for the presence of drugs.

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

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. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

Controlled Substances: Substances listed on Schedules I through V in 21 U.S.C. 802 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.

County: Clackamas County and/or Clackamas County Sheriff's Office

Covered Driver: Individual who is required to hold a Commercial Driver's License (CDL) for his/her job with the CCSO and who is subject to drug testing under Federal Highway Administration, Department of Transportation regulations (49 CFR Parts 40 and 382).

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: 49 CFR 40.3 – A specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT: United States Department of Transportation

Drugs: Controlled Substances

FHWA: Federal Highway Administration

FMCSA: Federal Motor Carrier Safety Administration

GVWR: Gross Vehicular Weight Rating; size criterion for determining classification of a commercial motor vehicle under federal regulations.

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

Medical Review Officer (MRO): A licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

Negative Drug Test: A test 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 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: Under this Policy, a covered driver is “on duty” when he/she is at work and ready to perform safety-sensitive functions, e.g., qualified and available to drive a commercial motor vehicle.

Positive Drug Test: A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by 49CFR Part 40.

Confirmed Positive Drug 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.

Verified Positive Drug 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.

Prohibited Drugs: Marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

Random Testing: Computerized random selection and testing for drugs in which each person in the computer data base 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. 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.

Refusal to Submit: Refusal by an individual to provide a urine or breath specimen after receiving notice of the requirement to be tested in accordance with this Policy.

Safety Sensitive Functions: Ready to perform, performing, or just finished performing, the following duties: waiting to be dispatched, inspecting equipment, driving, loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate a vehicle, repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

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 urine 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): Under DOT regulations, individuals who may serve as SAPs include:

- 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.

Under this Policy, the DER must inform employees or applicants who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

Substituted Specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

SUPPLEMENT B **SERVICE PROVIDERS**

The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office with the following provisions:

DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE

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

The firm(s) chosen will be responsible for overseeing compliance of agents of the CCSO with federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and MROs. It also performs random selections and maintains records as required by federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by the DER and communicated with the Peace Officers Association.

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's 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, covered employees who refuse testing, have alcohol test results of 0.01 BAC for Sheriff Office Policy (0.04 BAC for DOT policy) or greater, and/or have 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 covered drivers as needed.

The County's drug testing management service will assist the County in locating SAPs in the driver's community upon request.