

# Alcohol and Controlled Substances Testing of ODFW Employees Having A Commercial Driver License (DAS105-050- 0003)

[US DOT 49 CFR Part 40](#)

and

[US DOT Federal Motor Carrier Safety Administration \(FMCSA\) Part 382](#)

(updated March 27th, 2018)

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## I. DEPARTMENT PHILOSOPHY

The Department of Fish and Wildlife (ODFW) has an obligation and a right to have alert, drug/alcohol free employees on the job, and must provide a safe work environment. This means that during working hours, all employees are expected to be free from any substance, whether legal or illegal, that can negatively affect job performance or risk the health and safety of employees or the public.

The purpose of this testing program is to protect the physical and psychological well-being of all the employees at the department's facilities and job sites and protect the safety of the public as well as comply with federal regulations. Use of intoxicants and drugs that alter the ability to function on the job in an effective and safe manner will not be tolerated. The use of or condition of being under the influence of drugs/alcohol while at work can affect the morale of other employees as well as increase accidents, theft, and absenteeism. This testing program is a critical step in establishing and maintaining an efficient and safe work force and will be applied in conjunction with all established department policies, procedures, programs and applicable provisions of the collective bargaining agreement.

The department will enforce this program, and will make efforts to protect the privacy of its employees. It is the intent of this program to encourage and support employee recovery from substance abuse through the department Employee Assistance Program, (EAP), unless the EAP proves ineffective for that employee.

**Refer to the Collective Bargaining Agreement for specific provisions covering classified represented employees.**

## II. DEFINITIONS

### Accident

- A fatality; or
- A citation issued by a law enforcement official to the commercial driver AND one or more of the following situations-
  - Bodily injury to a person who, as result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - One or more of the vehicles incurs disabling damage as a result of the accident that renders the vehicle unable to be driven in daylight hours, or requires the vehicle to be transported away from the scene by a tow truck or other vehicle.

### Adulterated Specimen.

- A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing

an abnormal concentration of an endogenous substance.

#### Alcohol

The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

#### Alcohol Concentration

The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

#### Commercial Motor Vehicle

A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- Has a gross vehicle weight rating of 26,001 or more pounds; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.

#### Confirmation Alcohol Test

A second test which follows a screening test with a result of 0.02 or greater, and which provides a quantitative result of alcohol concentration.

#### Confirmation Drug Test

A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

#### Controlled Substance

Controlled substance means the category of drugs as listed in 49 CFR Part 40 as amended, includes:

- Marijuana
- Cocaine
  - Opioids (codeine, morphine, 6-monoacetylmorphine, oxycodone, hydrocodone, hydromorphone, oxymorphone) Phencyclidine (PCP) Amphetamines (methamphetamine, ecstasy MDMA)

#### Covered Employee

Any employee who is subject to the alcohol and drug testing requirements of 49 CFR 382 or this program.

#### Covered Position

Covered position is one that is subject to the alcohol and drug testing requirements of 49 CFR 382 or this program.

#### Designated Department Representative (DER)

The person(s) designated by the department to receive confidential test results.

Dilute Specimen

A urine sample with a low Specific Gravity and a low Creatinine level.

Driver

Any person who operates a commercial motor vehicle. This includes, but is not limited to full time, regularly employed drivers; casual, intermittent or occasional drivers. For the purpose of pre-employment/pre-duty testing only, the term includes a person applying to the department to drive a commercial motor vehicle.

Employee

Any full time, part time, seasonal, temporary employee or volunteer required to hold a Commercial Driver license as a condition of his/her work for ODFW.

Initial drug test (also known as a "Screening drug test").

The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial specimen validity test.

The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

Invalid Test

The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory.

Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD).

The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation.

For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Medical Review Officer (MRO)

A licensed physician (Medical Doctor or Doctor of Osteopathy) responsible for receiving laboratory results generated by the department's drug testing program who has knowledge of substance abuse disorders, possesses a certificate of completion or certification from an approved MRO program and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

On-Duty Time

- All time at a carrier or shipper plant, terminal, facility or other property, or on any public property, waiting to be dispatched (as defined by the department), unless the driver has been relieved from duty by the department;
- All time inspecting equipment or otherwise inspecting, servicing or conditioning

any commercial motor vehicle at any time;

- All driving time, i.e., time spent at the driving controls of a commercial motor vehicle at any time;
- All time, other than driving time, in or upon any commercial motor vehicle;
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded, or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
- All time spent performing the requirements relating to accidents; or
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

#### Performing a Safety-Sensitive Function

A driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform a safety-sensitive function.

#### Negative result.

The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

#### Positive Drug Test

A drug test that is confirmed by G.C./M.S. technology at or above the cut-off levels established by the Department of Health and Human Services (DHHS). These cut-off levels may change from time to time depending upon DHHS rules. The department will always test at the currently-required DHHS levels. The department will attempt to notify covered employees if these levels change. Currently, the cut-off levels are (expressed in nanograms per milliliters (ng/mL) as amended:

	<u>Screening</u>	<u>Confirmation</u>
• Marijuana	50 ng/mL	15 ng/mL
• Cocaine	150 ng/L	100 ng/mL
• Opiates	2000 ng/mL	2000 ng/mL
○ (Codeine and Morphine)		2000 ng/mL
• <b>When specimen confirms w/morphine at 2000 ng/mL or greater</b>		
○ 6-acetylmorphine (6-AM)	10 ng/mL	10 ng/mL
○ (Oxycodone, Oxymorphone)	100 ng/mL	100 ng/mL
○ (Hydrocodone, Hydromorphone)	300 ng/mL	100 ng/mL
•		
• Phencyclidine (PCP)	25 ng/mL	25 ng/mL
• Amphetamines	500 ng/mL	250 ng/mL
Methamphetamines	500 ng/mL	250 ng/mL
Ecstasy (MDMA)	500 ng/mL	250 ng/mL

#### Prohibited Conduct

No employee shall:

- Report to work or engage in work while having alcohol, illegal drugs, or any

other disabling or controlled substance in the employee's system.

- Report to work or engage in work with a breath alcohol level of 0.04 BrAC or greater.
- Possess, sell, store, transport (without manifest) or use alcohol while on-duty and/or on department property.
- Perform safety-sensitive duties within four (4) hours after using alcohol.
- Shall use alcohol for eight (8) hours following an accident in which the employee is required to take a post-accident alcohol test, or until the employee undergoes a post-accident alcohol test, whichever comes first.
- Refuse to submit to any testing required under this program or required by 49 CFR Part 382.
- Report for duty or remain on duty requiring the performance of safety sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle.

Refusal to Test (refusal to provide an acceptable alcohol or controlled substance test)

- Failing to provide adequate breath for alcohol testing without a valid medical explanation after he or she has received notice of the requirements for breath testing in accordance with the requirements of 49 CFR 382 or this program.
- Failing to provide adequate urine for controlled substance testing without a valid medical explanation after receiving notice of the requirement for urine testing in accordance with the requirements of 49 CFR 382 or this program.
- Failure to cooperate in any way with the process in a manner that obstructs the collection of the specimen.

Safety-Sensitive Function

Any of those duties set forth in 49 CFR Part 382 (See also "on-duty time")

Screening Alcohol Test

An analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

Screening Drug Test

An immunoassay screen to eliminate "negative" urine specimens from further analysis.

Substance Abuse Professional (SAP)

A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) who possesses a certificate of completion or certification from an approved SAP program with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

Validity Testing

Laboratory testing of the urine sample for the presence of substances not normally

found in human urine or naturally occurring substances at levels not consistent with human urine. Validity testing shall be conducted in accordance with the most recently published DOT guidelines.

Waiting To Be Dispatched

All other time not specified as on-duty time.

### **III. PROHIBITIONS**

- A. Alcohol Concentration
  - No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater.
- B. Alcohol Possession
  - No covered employee shall perform a safety-sensitive function while the employee possesses alcohol, unless the alcohol is manifested and transported as part of a shipment.
- C. On-duty Use
  - No covered employee shall use alcohol or a controlled substance while performing safety-sensitive functions.
- D. Pre-duty Use
  - No covered employee shall perform any safety-sensitive function within four (4) hours after ingesting alcohol.
- E. Use Following an Accident
  - No covered employee involved in an accident and required to provide a post-accident alcohol test shall use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident test, whichever occurs first.
- F. Refusal to Submit to Required Alcohol or Controlled Substance Test
  - No covered employee shall refuse to submit to a post-accident alcohol or controlled substance test, a random alcohol or controlled substance test, a reasonable suspicion alcohol or controlled substance test, or the follow-up alcohol or controlled substance test as required under 49 CFR 382 or this department's program and procedures.
- G. Controlled Substance Use
  - No covered employee shall report to duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle. If the safety sensitive employee is taking a controlled substance listed on the DOT prohibited medication listing, the employee is required to submit a signed statement from the prescribing physician stating that the employee may perform safety sensitive functions while taking a prohibited medication. The prescribing physician shall not name the prescribed medication in the report submitted to the department.
- H. Controlled Substance Test

- No covered employee shall report to duty, remain on duty or perform any safety sensitive functions if the employee tests positive for controlled substance.

#### IV. REQUIRED TESTS

##### A. Pre-employment

- All applicants for employment in a covered position, current employees who have been out of the random testing pool for more than 30 days, or employees accepting promotion or demotion into a covered position, will be informed that their employment into a covered position is contingent upon passing a test for controlled substances. Successfully passing the test requires a negative controlled substance result as verified by the Medical Review Officer. Employees are prohibited from performing safety sensitive functions until a negative result has been received from the Medical Review Officer
- Refusal to test by any finalist for a covered position will result in the individual not being hired into that position.

##### B. Post-accident

- A covered employee involved in an accident which involves a commercial motor vehicle shall be tested for alcohol and controlled substance as soon as practicable when the accident criteria meets the following DOT requirements:
  - Covered employee was performing safety-sensitive functions with respect to the vehicle if the accident involved the loss of human life; or;
  - Covered employee receives a citation under State or local law for a moving traffic violation arising for the accident; and
  - The commercial vehicle was disabled (such that it cannot be driven in daylight hours), OR anyone involved in the accident was immediately transported from the scene for emergency medical care.
- If the alcohol test is not administered within two (2) hours of the accident the department shall follow the requirements of 49 CFR 382.
- If the controlled substance test is not administered within thirty-two (32) hours or the alcohol test within eight (8) hours of the accident, the department shall cease attempts to administer the test and follow the requirements of 49 CFR 382.
- It is the responsibility of any covered employee who is subject to a post-accident testing to remain readily available for such testing. If the covered employee is not readily available, he/she may be deemed by the department to have refused to submit to testing. This provision shall not be construed to require the delay of necessary medical attention for injured people, to prohibit the employee from leaving the scene of an accident to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- The results of a post-accident breath or blood test for the use of alcohol or a urine test for the use of controlled substances, conducted by Federal, State or local officials having independent authority for the test(s), shall be considered to meet the requirements of this program and procedures, and that the results of such test can be obtained by the department in a timely manner.

##### C. Random

The department is required to conduct random alcohol and controlled substance tests. The minimum annual percentage rates for these tests are set, and can be modified, by the Federal Motor Carrier Safety Administration. The required testing

rated shall be based on the average number of driver positions.

The selection of covered employees for random alcohol and/or controlled substance testing shall be made by a scientifically valid method, such as a random table of a computer-based random number generator that is matched with employees' identification numbers. The random selection and testing dates shall be unannounced and spread reasonably throughout the year with each employee having an equal chance of being tested each time the random selections are made.

Each covered employee randomly selected for testing shall immediately upon notification report to the testing site, or to a specific on-site location for transporting to the testing site.

The number of covered employees selected will be in excess of the actual number required to enable the testing pool to reach the appropriate annualized rate despite absence due to sick-leave, vacations or other valid absences.

D. Reasonable Suspicion

A covered employee must submit to testing for alcohol and/or controlled substance if his or her supervisor or other department representative meeting the training requirements of 49 CFR 382 has reasonable suspicion to believe that the employee has violated the driver prohibitions of this program. The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substance test must be based on specific, contemporaneous, articulable observation concerning the appearance, behavior, speech or body odors of the covered employee. Additionally, findings may also include indications of the chronic and withdrawal effects of controlled substances.

If an alcohol test is required under this section the time constraints and documentation if they are not met are the same as those for a post-accident alcohol, (within two (2) hours.) The supervisor shall prepare a report indicating the reason for the delay. Alcohol testing must be accomplished within eight (8) hours of the request; after eight (8) hours all attempts shall cease to obtain an alcohol test.

If a controlled substances test is required under this section the time constraints and documentation if they are not met are the same as those for a post-accident alcohol, (within two (2) hours.) The supervisor shall prepare a report indicating the reason for the delay. Controlled substances testing should be accomplished within thirty-two (32) hours of the request; after thirty-two (32) hours all attempts shall cease to obtain a controlled substances test.

A written record shall be made of the observations leading to an alcohol and/or controlled substance reasonable suspicion test, and signed by the department supervisor or other department representative that made the observation, within 24 hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier. Forms for documentation of reasonable suspicion are included in Attachment C, **CDL Supervisor Packet**.

***Reasonable suspicion testing may only be performed after written approval from the Human Resources Division Administrator or the delegated authority.***

E. Return-to-duty

Before a covered employee returns to performing a safety sensitive function after engaging in prohibited conduct, the covered employee shall undergo an observed return to duty controlled substance and/or alcohol test.



The return-to-duty test result for controlled substance must indicate a verified negative result for use.

The return-to-duty test result for alcohol must indicate an alcohol concentration of less than 0.02

F. Follow-up

All drivers who have engaged in prohibited conduct and are eligible to return to duty shall be subject to unannounced follow-up alcohol and/or observed controlled substance testing for up to sixty (60) months. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and shall consist of at least six (6) tests in the first 12 months following the employee's return to duty. The substance abuse professional may terminate the requirements for follow-up testing at any time after the first six (6) tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

V. HANDLING TEST RESULTS AND CONFIDENTIALITY OF RESULTS

A. Test Results, Record Retention and Reports

All reports and documentation generated under the requirements of 49 CFR Part 382 and this program will be maintained in accordance with the requirements of 49 CFR Part 382.

B. Confidentiality and Access to Records

A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substance. Access to the employee's records shall not be contingent upon payment for records other than those specifically requested.

Except as required or allowed by law or expressly authorized or required in this section, the department shall not release to a third party information contained in records required to be maintained under 49 CFR 382.

Prospective employers are required to obtain, pursuant to an employee's signed consent, information regarding the drug and alcohol testing of the applicant including any refusals to be tested, during the preceding two (2) years of the date of application for employment. The department will not release this information to the prospective employer until it receives the employee's specific, written authorization to release the information. The background check also applies to employees transferring from a non-safety sensitive position into a covered position.

- ***The following is not federally mandated; however, it is mandated by state statute in Oregon: Licensed commercial drivers applying for a safety sensitive position will be asked to consent to a check of their drug and alcohol testing records from the Oregon Department of Motor Vehicles. If the applicant refuses to consent to the federal or state history checks, the offer for employment shall be withdrawn.***

Except as required or allowed by law or expressly authorized, records may be released to another identified party only with the specific, written consent of the covered employee authorizing release of the information to the party. The release request must specifically identify the individual to whom the information may be released and must specify the terms of the employee's consent for use of this information.

## VI. REQUIREMENT TO SUBMIT TO ALCOHOL AND CONTROLLED SUBSTANCE TESTING

Any covered employee subject to testing under the requirements of 49 CFR 382 or this program shall submit to being tested for alcohol and/or controlled substances immediately, or as soon as possible, upon notification to do so by his or her supervisor or other designated department representative. Failure to immediately report for a test will, in most cases, result in the driver being deemed as refusing to submit which carries the same consequences as a positive controlled substances test or an alcohol test with a concentration of 0.04 or greater. In most cases, refusals to be tested will result in immediate termination.

Once an employee is notified that he/she has been selected for a random test the employee must cease their work, consistent with safety, and proceed to the testing location as soon as possible. Tests cannot be delayed due to ODFW's need for continued operation of the Commercial Motor Vehicle or other duties of the selected driver. For this reason supervisors may coordinate testing with the contractor in advance, make other arrangements such as a fill-in driver or testing at a location or time that does not interfere with the operation.

- ***Supervisors may not give the affected employee any advanced notice of the test.***

## VII. TESTING PROCEDURES AND RESULTS

### A. Alcohol Testing Procedures

The instrument that will be used to determine the presence of alcohol is the Evidential Breath Testing device (EBT). Only qualified Breath Alcohol Technicians shall be used to conduct breath alcohol testing according to 49 CFR Part 40. If test results are negative, the Breath Alcohol Technician will inform the department and the employee and no further action is needed. If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be performed. If the result of the confirmation test is 0.02 or greater, but less than 0.04, the driver will be immediately removed from safety-sensitive function and placed on unpaid leave for at least 24 hours or the next working day whichever comes first. The driver will also be required to take a department required breath alcohol test prior to performing any safety sensitive function. If the result of the confirmation test is 0.04 or greater the employee will be subject to the same consequences as testing positive for a controlled substance.

### B. Controlled Substance Procedures

The department is required to use the "split sample" method of collection when conducting the test for controlled substances. The collection of samples for controlled substances testing shall be conducted by qualified collection technicians following the guidelines as published in 49 CFR Part 40. The employee will be required to show the collection technician the contents of his/her pockets. If the employee possesses a substance that is obviously intended to adulterate or substitute a specimen, a direct observation shall be immediately conducted in accordance with federal protocols. If, at any time, the employee refuses to submit to an observed collection when it is required under any of the circumstances outlined in 49 CFR Part 40, it will be deemed a refusal to submit. The urine sample will be placed into two (2) separate specimen bottles for shipment to a Department of Health and Human Services (DHHS) certified laboratory. If the screening test indicates a negative result

the department will inform the employee and no further action is needed. If the test result of the primary specimen is positive for drugs, adulterated or substituted the MRO shall notify the employee of the verified test result. The employee will be offered the opportunity to request that the MRO direct the split specimen be tested in a different DHHS-certified laboratory to re-confirm the presence of the drug(s), adulterant, or substitution for which a non-negative result was obtained. The MRO shall honor this request if it is made within 72 hours of the employee having been notified of a verified non-negative test result. The result on the split specimen will be transmitted back to the MRO. While waiting for the test result to be completed on the split specimen the employee shall not be permitted to perform safety-sensitive functions and shall be placed on unpaid leave. If the test results of the split specimen fail to reconfirm the non-negative result of the primary specimen, the MRO will cancel the test and report the reasons as required by 49 CFR 382. A canceled test is considered neither positive nor negative. If a split sample test fails to reconfirm the non-negative test result, the employee will be paid for the time that he/she normally would have worked during the waiting process. In the certain cases of a cancelled pre-employment, post-accident, return to duty or follow-up test a recollection may be necessary. If a test is cancelled due to the split sample not being available for testing, the department is required to have an immediate direct observation sample conducted. The MRO may also require a direct observation collection on cancelled tests in which the employee has not provided an adequate explanation for an invalid test result. Employees who request a split sample to be tested at a second DHHS laboratory shall bear all costs associated with the split testing unless the test fails to confirm the non-negative test result.

C. Report of a Dilute Specimen

1. If the MRO informs the department that a positive drug test was dilute, the test will be treated as a verified positive test. The employee will not be directed to take another test based on the fact that the specimen was dilute.
2. If the MRO informs the department that a negative drug test was dilute, the employee shall be directed to take another test immediately. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see § [40.67\(b\)](#) and (c)).
3. All employees shall be treated the same for this purpose. Retests shall be allowed in pre-employment test situations and in random test situations.
4. Employees directed to take another test shall be given the minimum possible advance notice that he or she must go to the collection site.
5. When an employee has been directed to take another test, the result of the second test -- not that of the original test -- becomes the test of record.
6. When an employee has been directed to take another test, and the second test is also negative and dilute, the employee shall not be directed to take a third test because the second test was dilute.

7. When an employee has been directed to take another test and the employee declines to do so, the employee shall be deemed as refusing to submit which carries the same consequences as a positive controlled substances test. In most cases, refusals to be tested will result in immediate termination.

D. Shy Bladder or Shy Breath Syndrome

If an employee has a medical condition that prevents an acceptable sample from being collected in accordance with 49 CFR Part 40, the employee will be required to have a medical examination conducted by a physician acceptable to the employee and the MRO. The employee will have five (5) business days to obtain a physician's statement verifying that a qualifying medical condition exists that would have prevented the employee from providing an acceptable sample. If the employee has failed to keep the appointment with the physician the employee may be disciplined up to and including termination. If the employee is unable to get an appointment with a physician in the five (5) day period, the employee is required to notify the department immediately of the situation. The department will then assist the employee to find a qualified physician to conduct the examination. If, after the examination is completed and the physician has determined that the employee does not have a qualified medical condition that would prevent an acceptable urine/breath sample from being obtained, the test result will be reported as a refusal to submit.

E. Requirement to Submit to Observed or Monitored Urine Specimen Collection

Under certain circumstances, a covered employee may be required to submit to an observed specimen collection. Some situations that will require the specimen collector to conduct an immediate direct observation collection are:

- Providing a sample that is not within the acceptable temperature range;
- Providing an obviously adulterated specimen;
- Conduct that clearly indicates an attempt to adulterate or substitute a specimen.

In other cases, Federal Law mandates an observed collection for follow-up or return-to-duty testing. The Medical Review Officer has the right to require a direct observation in other circumstances such as an invalid or cancelled test result.

The covered employee is required to submit to the observed specimen collection when requested. Failure to permit an observed or monitored collection when requested will be deemed a refusal to submit.

## **VIII. CONSEQUENCES OF ENGAGING IN PROHIBITED ALCOHOL AND/OR CONTROLLED SUBSTANCES USE OR TREATMENT/ FOLLOW-UP VIOLATIONS**

A. New probationary employees

Probationary employees who violate any provision of this program shall be subject to immediate discipline up to and including discharge.

B. Regular status employees

Any regular status, covered employee who violates any provision of this program shall be subject to discipline or discharge. This may include a requirement to fully comply with the department's Return-To-Work/ Last Chance Agreement. Such an agreement shall include the conditions under which the employee shall be allowed to continue his or her employment with the department. It may also include a requirement for continued compliance and satisfactory completion of any treatment prescribed by the

substance abuse professional including after-care programs and special requirements by the department, or any other requirements deemed appropriate by the parties involved, including discharge if the conditions of the agreement are not met. The department shall decide on a case-by-case basis, if the covered employee is eligible to participate in a last chance agreement.

C. Referral, evaluation, and treatment

Employees who have violated this program may be offered a “last chance agreement.” Employees who have violated this program are not automatically entitled to a last chance agreement. The department will determine on a case-by-case basis depending upon the circumstances if an employee is eligible.

The employee shall be evaluated by a qualified substance abuse professional (“SAP”). The employee is financially responsible for any and all costs associated with the SAP process and required follow-up drug/alcohol testing subject to the provisions of the Collective Bargaining Agreement. The substance abuse professional shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and/or controlled substance use. An employee who has not been terminated or who may be eligible for a return to duty contract is responsible to have the substance abuse professional initial assessment completed within ten (10) working days after referral from the department.

If determined necessary by the substance abuse professional, the employee must properly follow any education, treatment or rehabilitation program identified.

The employee must be re-evaluated by the substance abuse professional to determine that the employee has properly followed, and is in compliance with, the prescribed treatment or rehabilitation program.

The employee shall undergo an observed return-to-duty drug and/or alcohol test with a result indicating an alcohol concentration less than 0.02 and/or a negative controlled substances test.

Additionally, the employee will be subject to unannounced observed follow-up alcohol and/or controlled substance tests following his or her return to duty. The number and frequency shall be as directed by the substance abuse professional and consist of at least six (6) tests in the first 12 months following the employee's return to duty. Such follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate, at his or her discretion, the follow-up tests at any time after the first six (6) tests have been administered. The treatment or rehabilitation program used may not be the substance abuse professional's private practice or be provided by a person or organization from which the substance abuse professional receives remuneration or has a financial interest.

D. Available work for employees removed from safety sensitive duties

Except as provided for in the Collective Bargaining Agreement, the department will not provide non-safety-sensitive work for a covered employee who has violated any of the provisions of this program. If an employee has made a voluntary admission of use in accordance with this program, if appropriate non-safety sensitive work is available it may be offered on a case-by-case basis.

E. Dismissal from employment from the department, the employee will receive

information from the department regarding available Substance Abuse Professionals (SAP). Employees will be encouraged to follow up with a SAP professional. According to CFR 49 part 40 and FMCSA part 382, the department has no further obligation.

**IX. CONSEQUENCES OF AN ALCOHOL TEST RESULT OF AT LEAST 0.02 BUT LESS THAN 0.04**

Any covered employee tested under the provisions of 49 CFR 382 of this program who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform or continue to perform safety-sensitive functions. The employee may not return to work until the start of the employee's next regular scheduled duty period, but not less than 24 hours following administration of the test. If the result of the confirmation test is 0.04 or greater the employee will be subject to the same consequences as testing positive for a controlled substance.

The department may provide non-safety-sensitive work for a covered employee tested under the provisions of 49 CFR 382 or this program who is found to have an alcohol concentration of 0.02 or greater but less than 0.04. Additionally, the employee may be required to pass a department required return-to-duty test, which results in an alcohol concentration of less than 0.02 before he or she begins their next regularly scheduled duty period.

**X. PAYMENT OF COSTS ASSOCIATED WITH THE TESTING PROGRAM**

**A. Pre-employment**

The department will pay the costs associated with pre-employment testing. The department will not pay the candidate's time for a pre-employment test.

**B. Regular Status and New Probationary Employees**

The department will pay testing costs including paid time for random, reasonable suspicion and post-accident testing as provided for in the Collective Bargaining Agreement. Additional costs which may result from an employee who voluntarily admits use or violates any of the provisions of this program will be the responsibility of the employee unless those costs are covered by insurance or otherwise covered by any department program for which the employee is eligible. Such costs may include the dependency evaluation, treatment, return-to-duty testing and follow-up testing. An employee who requests to have a test performed on a split specimen following a positive drug result on the primary specimen must make the arrangements and pay for the test through the MRO. The department will reimburse the employee for the testing cost if the test result does not re-confirm the non-negative test. Time loss incurred while seeking an evaluation or participating in treatment programs as well as the time needed to submit to follow-up testing shall be at the employee's expense and will not be compensated by the department.

**XI. EDUCATIONAL INFORMATION ON EFFECTS OF ALCOHOL AND CONTROLLED SUBSTANCES**

All covered employees will receive training and/or education materials on the effects of alcohol and controlled substances on a person's health, work and personal life; signs and symptoms of an alcohol or controlled substance problem; and available methods of

intervention when an alcohol or controlled substances program is suspected.

## **XII. MEDICINAL MARIJUANA**

The department, as well as the D.O.T., views Marijuana as a Schedule 1 controlled substance and prohibits employees from having any detectable level in their system while working for this department. Operation of a commercial motor vehicle is prohibited while using Marijuana.

## **XIII. PRESCRIPTION MEDICATIONS AND OVER THE COUNTER DRUGS**

Employees are responsible to report to duty free from the effects of any controlled substance or alcohol. Covered employees must report the use of prescriptions and over-the-counter drugs that could have a disabling effect or otherwise adversely affect the covered employee's fitness for duty or job performance to their immediate supervisor. It is the covered employee's responsibility to determine from the physician, pharmacist, or other health care professional whether or not the prescribed or over-the-counter drugs could affect the covered employee's fitness for duty or impair job performance or if the medication is listed on the prohibited controlled substance listing as published by the Department of Transportation. Covered employees may be required to provide a written medical authorization to work from a physician, upon reporting the use of prescription or over-the-counter drugs. Failure to report the use of prescription or over-the-counter drugs that have disabling effects or otherwise affect the covered employee's fitness for duty while at work and failure to provide proper evidence of medical authorization to work may result in discipline, up to and including suspension and/or discharge.

## **XIV. CERTIFICATE OF RECEIPT**

Each covered employee will be required to sign a certificate of receipt certifying that he or she has received a copy of this program, which is the basis for implementing the requirements of the U.S. Department of Transportation Federal Motor Carrier Safety Administration rules and regulations pertaining to alcohol and controlled substances testing of covered employees.

## **XV. QUESTIONS REGARDING THIS PROGRAM**

The following department representative(s) are available to answer questions regarding the information contained in this program:

Safety & Health Manager, Human Resources Division

Or:

Human Resources Division Administrator

## **XVI. RESPONSIBILITIES**

- A. The Department of Fish and Wildlife shall provide the resources necessary to carry out this policy.
- B. Department Safety and Health Managers shall:
  - Manage the activities of the Contractor who is to carry out the sample selection, collection and testing, MRO services, reporting of results, SAP services, record keeping, etc. This person must be available twenty-four hours per day to assist the contractor when a positive test result is reported.
  - Receive and confidentially maintain the test results from the Contractor.

- Confidentially report the test results to the employees tested and strictly limit knowledge of results to those who have a need to know (e.g., may include an immediate supervisor and personnel officer.)
  - Promote a drug/alcohol free workplace by circulating materials which inform employees, supervisors and managers of the effects of drug/alcohol impairment in the workplace and behavioral symptoms of impairment.
- C. Human Resources Administrator shall have ultimate responsibility for program management and will be on call when Safety and Health Manager is unavailable.
- D. Managers and supervisors shall:
- Be encouraged to discuss with employees any behavior or job performance factors that may indicate the use of drugs, alcohol, or other violations of this policy and to suggest, when appropriate, that employees seek assistance through the Employee Assistance Program (EAP).
  - Direct employees in designated safety-sensitive positions to comply with the provisions of the Drug and Alcohol Testing policy.
  - Receive training on the physical, behavioral, and performance indicators of probable drug use and alcohol misuse prior to making reasonable suspicion determinations.
  - Determine through direct observation whether an employee is capable of performing his or her assigned duties. Such determinations shall be based on specific, contemporaneous, articulable, reliable observations concerning the appearance, behavior, speech, or body odor of the employee.
  - Take the action(s) necessary under the Drug and Alcohol Testing Policy and immediately bring their observations of reasonable suspicion to the attention of their human resources analyst before proceeding with actions required by the Drug and Alcohol Testing Policy.
  - Document this behavior of any employee suspected of being incapable of performing assigned duties, not allow the employee to remain at the work place, and ensure that the employee gets home safely.
  - Discuss with the human resources analyst the specifics of each situation where an employee is removed from safety-sensitive duties or removed from the work place, to review appropriate disciplinary action. Each situation will be evaluated on a case-by-case basis.
  - Ensure that all candidates for hire into a safety sensitive position complete pre-employment drug testing.
  - Ensure that positions requiring a commercial driver license have an approved statement included in the job announcement and position description.
  - Ensure that all CDL holders are trained in their responsibilities to this program and are provided with a copy of this policy.
  - Act as a point of contact for the contractor and arrange testing of subordinates in accordance with testing procedures provided by the contractor.
  - Not give employee selected for a random test any advanced notice of the test. Because tests shall not be delayed due to ODFW's need for continued operation of the Commercial Motor Vehicle or other duties of the selected driver, supervisors may coordinate testing with the contractor in advance, make other arrangements such as a fill-in driver or testing at a location or time that does not interfere with the operation.
- E. Employees shall:
- Report to work fit for duty and refrain from the use of controlled substances on and off the job and the misuse of alcohol as stated in this policy.



- Provide information to supervisors about prescribed medications that may impair the ability to perform assigned duties.
- Comply with alcohol and drug testing when requested in accordance with the provisions of this policy and federal regulations.
- Cease their work, consistent with safety, and proceed to the testing location as soon as possible after being notified that the employee has been selected for random test.