

Drug and Alcohol Policy and Procedures

Kitsap County

February 2022



**KITSAP COUNTY
DRUG AND ALCOHOL POLICY
FOR USE WITH FMCSA/DOT REGULATED EMPLOYEES**

A. Overview

Alcohol and drug use and misuse are serious problems affecting the lives of millions of workers and have been linked to accidents and deaths in the workplace, decreased worker productivity, and increased health care costs and increased employee absences. The purpose of this Policy is to promote safety by detecting and deterring conduct that may jeopardize the individual health, safety, and wellbeing of employees and the public.

“Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 Code of Federal Regulations (CFR), Part 40, and “State of Washington Uniform Commercial Driver’s License Act,” chapter 46.25 RCW, require that employers conduct alcohol and controlled substances testing of drivers who operate commercial motor vehicles, including but not limited to: County drivers, contract drivers, mechanics, and supervisors with a commercial driver’s license. For the purpose of this Policy employee will be referred to as "driver", and employer will be referred to as "County." This Policy provides guidelines for circumstances under which the Federal Motor Carrier Safety Administration (FMCSA) and the United States Department of Transportation (DOT) mandated testing must be conducted. Of course, all the details of every possible situation can not be anticipated, so the County reserves the right to determine the appropriate application of this Policy and general employment policies to any particular case. This Policy shall not be deemed to create a vested or contractual right for any employee.

Drivers covered by this Policy have been provided a copy of this Policy and by their signature, are verifying that they have read and understand the Policy. **Drivers should note that in addition to the required DOT regulations, they are also subject to the County's drug and alcohol policy, and all other applicable County policies and procedures.**

All drivers must always work drug and alcohol free. If a driver has any questions about this Policy, contact Human Resources at 360-337-7185.

The following conditions and activities are expressly prohibited:

The manufacture, sale, use, or possession of alcohol, any controlled or illegal substance (except strictly in accordance with medical authorization), or any other substances which impair job performance or pose a hazard, while on County premises or property, during working hours, or at any time while representing the County in any work-related function.

For purposes of this Policy, having any detectable level of alcohol or illegal or controlled drug in one's system that exceeds state and/or Federal thresholds, will be considered a violation of this Policy.

B. Voluntary Self Admission of Alcohol and Drug Problems

Usually, alcohol and drug dependency can be successfully treated with professional help. Drivers who are having problems with alcohol or drug use are encouraged to seek voluntary counseling and treatment. It is the driver's responsibility to seek help when needed, and to do so before substance abuse causes problems on the job or results in disciplinary action.

Drivers who voluntarily admit to alcohol or controlled substances misuse are not subject to the referral, evaluation, and treatment requirements of 49 CFR Part 40, except for return to duty tests, on the condition that:

1. The driver self-identifies *prior* to being informed of a test;
2. The driver makes the admission of alcohol or controlled substances misuse before performing a safety sensitive function; and
3. The driver does not perform a safety sensitive function until the County is satisfied that the driver has successfully completed education or treatment requirements, in accordance with the Substance Abuse Professional (SAP) recommendations.

Prior to returning a driver to work, the County will:

1. Not take any adverse action against a driver making a voluntary admission of alcohol or controlled substances misuse, provided that the admission occurs before the driver has been subject to disciplinary action, and the use/misuse has not affected job performance;
2. Allow the driver sufficient opportunity to seek an evaluation, education, or treatment to establish control over the driver's drug or alcohol problem; and
3. Permit the driver to return to safety sensitive duties **only** upon successful completion of an educational or treatment program, as determined by a SAP.

*** The County medical plan, when available to the driver, may cover a portion of the evaluation and treatment costs, however, uncovered costs remain the driver's responsibility to pay. The County will not pay the cost of any follow-up on controlled substances or alcohol testing required by the SAP.¹*

Refusing to permit an observed collection, or interfering with the collection process, is considered a refusal to test and will constitute a verified positive drug test result.

The following SAP can provide help and referrals:

Wellspring EAP | (800) 553-779 | Wellspringeap.org

C. Definitions

¹ ** Signifies a County requirement, not a DOT mandated requirement.

1. **"Alcohol"** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
2. **"Alcohol concentration (or content), BAC"** means 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 under 49 CFR Part 382.
3. **"Alcohol use"** means the drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication) containing alcohol.
4. **"Commercial motor-vehicle"** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - a. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - b. Has a gross vehicle weight rating of 26,001 or more pounds;
 - c. Is designed to transport 16 or more passengers, including the driver; or
 - d. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F).
5. **"Controlled substances"** mean those substances identified in 49 CFR Part 40.85, as amended: marijuana, cocaine, opioids, amphetamines, and phencyclidine.
6. **"DOT Agency"** means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 655) in accordance with 49 CFR Part 40 and 46 CFR Parts 4 and 16
7. **"Driver"** means 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; leased drivers and independent, owner-operator contractors who are either directly employed by, or under lease to the County, or who operate a commercial motor vehicle at the direction of, or with the consent of the County.
8. **"Drug"** has the meaning of any controlled substances, prescription, or over-the-counter medication.
9. **"EBT (or Evidential Breath Testing Device)"** means an EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and

identified on the CPL as conforming with the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs.

10. **"Employer"** means an entity employing one or more driver's (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with 49 CFR Part 382. The term refers to the entity responsible for overall implementation of DOT drug and alcohol program requirements, as well as those individuals employed by the entity who take personnel actions resulting from violations of 49 CFR Part 382 and any applicable DOT agency regulations. Service agents are not employers.

11. **"Licensed medical practitioner"** means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

12. **"Medical Review Officer (MRO)"** means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the County's drug testing program, who has knowledge of substance abuse disorders 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.

13. **"Performing (a safety-sensitive function)"** means 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 any safety-sensitive functions.

14. **"Reasonable Suspicion"** means 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. A reasonable suspicion decision consists of specific facts, circumstances, physical evidence, physical signs and symptoms or a pattern of performance and/or behavior that would cause a supervisor to reasonably conclude a driver may have engaged in on the job controlled substance or alcohol use, or may be under the influence of some controlled substance or alcohol (i.e., slurred speech, unsteady gait, dilated pupils, odor of alcohol or controlled substances, unusual and/or out of character behavior suggesting the use of controlled substances or alcohol).

15. **"Refuse to submit (to an alcohol or controlled substances test)"** means that a covered driver:

- a. Fails to remain readily available for testing after post-accident event. For example, consuming alcohol after an accident and before a testing decision is made.
- b. Refuses to go or fails to show up for any test (except a pre-employment test) within a reasonable time after being directed to do so by the County, including the failure of a driver (including an owner-operator) to appear for a test when called by a Consortium/Third Party Administrator;

- c. Fails to remain at the testing site until the testing process defined by 49 CFR, Part 40.63 is complete;
- d. Fails to provide a urine specimen for any drug test, or breath or saliva sample for an alcohol test, required by 49 CFR Part 382, after the testing process has commenced;
- e. Fails to provide a sufficient amount of urine, breath or saliva when directed, unless it has been determined, through a required medical evaluation, that there was an adequate medical explanation for the failure to provide;
- f. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen;
- g. Fails or declines to take a second test at the direction of the County, following a negative dilute result, as required by 40.197(b);
- h. Fails to undergo an additional medical examination, as directed by the MRO, as part of the verification process, or as directed by the designated County representative concerning the evaluation as part of the "shy bladder" procedures in 49 CFR Part 40, subpart I;
- i. Fails to undergo a medical examination or evaluation as directed by the County as part of the insufficient breath procedures outlined in 40.265(c);
- j. Fails to cooperate (e.g. refuses to empty pockets when directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector) or otherwise interferes with any part of the testing process;
- k. Fails to sign the certification at Step 2 of the alcohol testing form (ATF);
- l. Is reported by the MRO as having a verified adulterated or substituted test result;
- m. For an observed collection, fails to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and/or to turn around to permit the observer to determine if any type of prosthetic or other device is used to interfere with the collection process;
- n. Possess or wear a prosthetic or other device that could be used to interfere with the collection process; or
- o. Admits to the collector or MRO that the specimen was adulterated or substituted.

Drivers who refuse to be tested when required are not permitted to operate a commercial motor vehicle and are immediately relieved of duty. Such refusal will be treated as a positive test.

Any refusal to take a controlled substances or alcohol test under circumstances that constitute a refusal under 49 CFR 40, and where the refusal to test has not been reported by the MRO,

shall be reported by the County to the Washington State Department of Licensing and the FMCSA Clearinghouse in accordance with RCW 46.25.123 and RCW 46.25.125.

The County regards a refusal to test as a serious offense and will take appropriate disciplinary action. Discipline is determined on a case-by-case basis and may range from suspension without pay to termination of employment. Any driver who refuses to be tested more than once during his/her employment shall be terminated.

16. **"Safety-sensitive function"** means all time from the time a driver begins to work or is required to be in a state of readiness to work, until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- a. All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the County;
- b. All time inspecting equipment as required by 49 CFR 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- c. All time spent at the driving controls of a commercial motor vehicle in operation;
- d. All time, other than driving time, in or upon any commercial motor vehicle, except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR 393.76);
- e. 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; and
- f. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

D. Prohibited Conduct

The following is considered prohibited conduct under this policy:

1. No driver shall use alcohol while performing safety-sensitive functions.
2. Under FMCSA regulations, no driver shall perform safety sensitive functions within four (4) hours after using alcohol.
3. No driver shall report for duty or remain on duty that requires the performance of safety sensitive functions while having an alcohol concentration of 0.04 or greater.

4. No driver required to take a post-accident alcohol test under 49 CFR 382.303 shall use alcohol for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
5. No driver shall refuse to submit to a pre-employment controlled substance test or post-accident, random, reasonable suspicion, return to duty or follow-up controlled substance and/or alcohol test required by 49 CFR Part 382.
6. No driver shall report for duty, or remain on duty, requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.
7. No driver shall report for duty, remain on duty, or perform a safety sensitive function if the driver tests positive for controlled substances.
8. No employer may allow, require, permit or authorize a driver to operate a commercial motor vehicle during any period in which the County determines that a driver is not in compliance with the return-to-duty requirements of 49 CFR Part 40, Subpart O, after the occurrence of any of the following events:
 - a. The driver receives a positive, adulterated, or substituted drug test result;
 - b. The driver receives an alcohol confirmation test result of 0.04 or higher alcohol concentration;
 - c. The driver refused to submit to a test for drugs or alcohol;
 - d. The driver used alcohol prior to a post-accident alcohol test in violation of 382.209; or
 - e. The County has actual knowledge, as defined in 382.107 that a driver has:
 - (1) Used alcohol while performing safety-sensitive functions in violation of 382.205;
 - (2) Used alcohol within four hours of performing safety-sensitive functions in violation of 382.207; or
 - (3) Used a controlled substance.

The County shall not permit a driver to continue to perform safety sensitive functions if the County has actual knowledge of a driver violating any of the aforementioned prohibitions. The County can obtain actual knowledge based on the County's direct observation of the driver, reasonable suspicion, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances, or a driver's admission of alcohol or controlled substances use, except as discussed in the Voluntary Self Admission section of this document.

***Prescription Medications: No driver may possess any prescription medication or report to work while using any prescription, except when he/she is under a doctor's care and the doctor has advised the driver that the substance does not affect his/her ability to operate a commercial motor vehicle. The use of medication that could affect a driver's safe job performance is prohibited while working.*

The driver shall report to Human Resources, (360) 337-7185, humanresources@co.kitsap.wa.us, the use of any prescribed medication and, without identifying the medication, shall provide a certificate from the driver's doctor that the use of the medication will not impair his/her ability to safely perform his/her duties. If, as a result of testing under this policy, the driver is found to have the presence of controlled substances in the body which is a result of the use of his/her legally prescribed medication that has not been reported, the driver shall be removed from service without pay until it is determined that the use of medication will not impair his/her ability to safely perform assigned duties.

E. Alcohol and Controlled Substances Testing

Drivers may be tested for controlled substances at any time during the workday. Alcohol testing will only be conducted just before, during, or after performing safety sensitive functions. Drivers will be subject to testing procedures that follow.

1. General Testing Procedures

The County uses a Medical Review Officer (MRO) to Review all laboratory controlled substances test results. If the laboratory reports a positive controlled substances results to the MRO, the MRO will contact the applicant/driver to inquire about medications that may explain the lab findings.

The Human Resources Department is the designated County representative with whom the MRO communicates concerning tests and testing results. Drivers who have questions about DOT requirements, these policies and procedures, or substance abuse referrals, evaluations, or treatment should contact Human Resources.

2. Alcohol Testing

Testing will be conducted by a qualified technician according to 49 CFR Part 40 procedures. Either a breath or saliva test by an EBT device will be used for the testing.

The test for alcohol use is conducted by the County's approved collection site's trained technicians using a DOT approved breath testing instrument that measures alcohol concentrations through breath samples.

A driver subject to testing reports to a designated testing location where the breath alcohol test is administered, and in an area that provides aural and visual privacy to the driver being tested.

Test results are printed onto the breath alcohol form, shown to the driver, and the form is signed by both the Breath Alcohol Technician (BAT) and the driver.

If the alcohol concentration is less than 0.02, no further testing is required, and the driver can return to the workplace.

Drivers with an alcohol concentration greater than 0.02 are given a confirmation test after 15 minutes.

The results of the initial test and the confirmation test are printed on the breath alcohol test form and signed by the BAT and the driver.

The BAT notifies the Human Resources Department of the test results, and the Human Resources Department notifies the driver's supervisor. Test results are filed in the Human Resources Department in a confidential manner.

A driver tested under the requirements of this policy who is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, shall be removed immediately from performing safety sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following the test administration.

*** The driver's absence from work due to an alcohol concentration above 0.02, but less than 0.04, is considered an unauthorized absence, and will be considered leave without pay.*

If a covered driver is tested for alcohol and receives a confirmation breath alcohol concentration of 0.04 or greater, the driver shall be removed from duty immediately. The driver must be advised of available treatment programs for alcohol abuse. The driver shall be subject to formal discipline, up to and including termination.

A driver who has failed an alcohol test, yet is offered an opportunity to return to duty, must be evaluated by a Substance Abuse Provider (SAP) who is trained in alcohol abuse detection and rehabilitation, and to determine appropriate treatment, if any, is necessary.

- Upon completion of a recommended treatment plan, the SAP must re-evaluate the driver to ensure successful completion.
- In order to return to safety sensitive functions following removal for a positive alcohol test, the covered driver must pass a return to duty test by demonstrating a breath alcohol concentration of less than .02 alcohol.. Costs for all testing is the responsibility of the driver.
- Once returned to duty, the covered driver is subject to at least six (6) follow up alcohol tests over a 12 month period and may be subject to continued testing for up to five (5) years, at the discretion of the SAP. Follow up tests will be paid for by the covered driver.

A driver who fails an alcohol test more than once in a five (5) year period shall be terminated from employment with the County.

All positive alcohol confirmation tests shall be reported to the Washington State Department of Licensing by the MRO, in accordance with RCW 46.25.123 and RCW 46.25.125.

3. Controlled Substances Testing

Under DOT regulations the only acceptable test for controlled substances is conducted using a urine specimen that is provided at the time of the test.

A driver subject to testing reports to a designated testing location where the controlled substances test is administered, in an area that provides privacy to the driver being tested.

All specimens will be processed as split sample. The split specimen is shipped by the MRO to a DOT approved laboratory following quality assurance procedures. The laboratory conducts the appropriate tests and reports results to the MRO.

The MRO notifies the Human Resources Department of the results in a confidential manner.

A driver who tests positive for controlled substances shall be subject to formal discipline, up to and including termination.

A driver who tests positive for controlled substances, yet is offered an opportunity to return to duty, must be evaluated by a SAP who is trained in controlled substance abuse detection and rehabilitation, to determine what treatment, if any, is necessary.

- Upon completion of a recommended treatment plan, the SAP must re-evaluate the driver to ensure successful completion.
- In order to return to safety sensitive functions following removal for a positive controlled substances test, the covered driver must pass a return to duty test by demonstrating a negative controlled substances test result, paid for by the driver.
- Once returned to duty, the covered driver is subject to at least six (6) follow up alcohol tests over a 12-month period and may be subject to continued testing for up to five (5) years, at the discretion of the SAP. Follow up tests will be paid for by the covered driver.

Drivers who fail a controlled substances test more than once in a five (5) year period shall be terminated from employment with the County.

All verified positive controlled substances tests shall be reported to the Washington State Department of Licensing by the MRO, in accordance with RCW 46.25.123 and RCW 46.25.125.

5. Urine Specimen Collection

Specimen collections will be conducted in accordance with the procedures of 49 CFR Part 40, as amended. The collection procedures are designed to ensure the security and integrity of the specimen provided by each covered driver, and those procedures will strictly follow federal chain-of-custody guidelines. Every reasonable effort will be to preserve the individual's privacy as much as possible, consistent with ensuring an accurate result. Drivers will be required to empty their pockets before providing the drug test specimen.

Under normal circumstances the applicant or driver will be afforded complete privacy in the restroom for providing the urine sample. Certain situations do require the urine sample be provided under direct observation by the same gender as the gender identified by the driver. Those situations include:

- The temperature on the original specimen was out of range;
- The original specimen appeared to have been tampered with (i.e. unusual color, odor, foam, etc.);
- The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to the County there was not an adequate medical explanation for the result;
- The MRO reported to the County that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
- The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5mg/dL, and the MRO reported the specimen to the County as negative-dilute and a second collection must take place under direct observation; or
- All return-to-duty or follow-up drug tests.

When same gender direct observation occurs, the driver may be required to follow the observer's instructions to raise their clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process.

Refusing to permit an observed collection, or possessing or wearing a prosthetic or other device that could be used to interfere with the collection process, are considered a refusal to test and will constitute a verified positive drug test result.

6. Laboratory Analysis

As required by 49 CFR Part 40, only a laboratory certified by the Department of Health and Human Services (DHHS) will be retained by the County to perform the analysis of the urine specimen for controlled substances. The initial screening test will be performed by immunoassay and will test for substances and at cutoff levels required by 49 CFR Part 40, as amended. All specimens identified as positive on the initial screening test will be confirmed using gas chromatography/mass spectrometry techniques at cutoff levels required by 49 CFR Part 40, as amended.

7. Medical Review

All alcohol and/or controlled substances test results will be reviewed by a MRO before results are reported to the County. The MRO will attempt to contact the driver to discuss the test results before reporting positive results to the County. The County MRO is:

Drug Free Business Service | 18912 North Creek Parkway, Suite 202 | Bothell WA 98011 | (866) 448-0651

8. Notification of Results

In the event that the MRO is unable to contact the driver, the County will notify the affected driver of any alcohol and/or controlled substances test that is reported as positive by the MRO. The County will notify driver-applicants of the results of alcohol and/or controlled substances testing if the applicant requests that information in writing within 60 days after the County notifies the applicant that he/she has or has not been hired because of a failed test.

9. Re-Analysis of Original Specimen

Within 72 hours of the MRO notifying the driver of a verified positive controlled substances test, or an adulterated or substituted specimen, the driver may request the reanalysis of the original specimen. Only the MRO may authorize such a reanalysis, and such a reanalysis may take place only at laboratories certified by the Department of Health and Human Services (DHHS). If the reanalysis fails to reconfirm the presence of the drug or drug metabolite, the MRO shall cancel the test. All drivers have a right to request the reanalysis of the original specimen for which the applicant and/or driver will be responsible to pay.

F. What Tests are Required

*** Any drug test with a negative dilute test result will require the applicant/driver to retest, with the exception of pre-employment tests. He/she should report to the collection site as early in the day as possible, or as soon as notified by the County, and refrain from drinking any fluids for at least two (2) hours prior to testing.*

DOT regulations require testing for alcohol and the following controlled substances: marijuana, cocaine, opioids, amphetamines and phencyclidine. Covered drivers are required to participate in alcohol and/or controlled substances testing, including but not limited to urine, saliva, and breath screens, under the following circumstances:

1. Pre-Employment & Promotions

Applicants for positions that require a CDL will be tested and controlled substances prior to hire. Existing employees applying for promotional CDL positions will be tested for controlled substances, prior to promotion, unless the applicant for promotion has:

- a. Passed a DOT controlled substance test within the past six (6) months or has participated in a random testing program for the 12 months prior to the date of application for the position; and
- b. has not violated any prohibitions of another DOT agency within the past six (6) months.

A driver/applicant, whether a potential new hire or a promotional applicant who tests positive on an alcohol and/or controlled substances test will not be hired. If an existing applicant tests positive for alcohol or controlled substances, the applicant must provide documentation of his/her successful completion of DOT return-to-duty requirements (i.e., an evaluation by a substance abuse professional, education and/or treatment, and a negative DOT test, all of which must meet the requirements of 49 CFR Part 40). The driver/applicant will be responsible to pay for the pre-treatment evaluation, education, and/or treatment, and the subsequent DOT return-to-duty test.

Effective January 6, 2020, the County will query the Commercial Driver's License Drug and Alcohol Clearinghouse to determine if any records exist for the driver. As a condition of employment, an applicant must acknowledge electronic consent through the Clearinghouse, granting the County access to any and all of the following information:

- A verified positive, adulterated, or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04, or higher;
- A refusal to submit to any test required under 49 CFR Part 382;
- A report of actual knowledge of:
 - On duty alcohol use;
 - Pre-duty alcohol use;
 - Alcohol use following an accident;
 - Controlled substance use;
- A substance abuse professional (SAP) report of the successful completion of the return-to-duty process;
- Negative return-to-duty test(s); and
- The County's report of completion of follow-up testing.

Results of the query may result in the withdrawal of the job offer.

2. Pre-Employment and Promotional Testing Procedures

- Upon a conditional offer of employment, the finalist will be scheduled for a controlled substance test by the Human Services Department. The County pays the costs of the test.
- Applicants will be notified of the requirement to pass controlled substances testing through the job recruitment announcement.
- When a pre-employment, controlled substances test is determined to be a cancelled test by the MRO, the applicant will be required to immediately report to the collection site location to submit another urine specimen for controlled substances testing.
- The MRO reports results of pre-employment tests to the Human Resources Department.
- The Human Resources Department will notify the hiring authority and applicant of the results of the required pre-employment tests.

- Applicants who test positive without adequate explanation of the results will not be considered eligible for employment, or promotion, within one year of the positive test.
- Applicants who refuse to submit to a controlled substances test shall be regarded as having failed the test and shall not be considered eligible for employment, or promotion, within one year of such determination.

3. Post-Accident

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each surviving driver shall be tested for controlled substances and alcohol when the driver:

- Was performing safety sensitive functions with respect to the vehicle, if the accident involved the loss of human life (fatality);
- Received a citation as a result of the accident, and the accident involved bodily injury to any person who, as a result of the accident, immediately receives medical treatment away from the scene of the accident; or
- Received a citation as a result of the accident, and the accident involved one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

The alcohol test must be completed within two (2) hours of the accident. If not, the driver must advise the County of the reasons for the delay and shall continue to have the test conducted for up to eight (8) hours following the accident. After eight (8) hours the attempt to test will cease, the driver must again provide the reasons for the test not being administered. A driver may not consume alcohol for eight (8) hours following an accident that requires the DOT alcohol test.

A controlled substances test shall be administered as soon as practicable, but no later than 32 hours following the accident. After 32 hours the attempt to test will cease. The driver must provide the reasons for the test not being administered promptly. A driver must remain readily available for testing or may be deemed by the County to have refused to submit to testing.

***In addition, any CDL driver, while performing County related functions, involved in an accident will be required to submit to non-DOT testing under the following circumstances:*

- *any non-commercial motor vehicle accident,*
 - *including property damage, where a citation is served under state or local law for a moving violation arising from the accident;*
 - *any accident involving disabling damage to a county vehicle;*
 - *any accident in a vehicle rented in the county's name; or*
- *any accident where there is reasonable suspicion to believe that alcohol or drug usage may have contributed to the accident.*

Testing will be to determine the presence, use, or any involvement with alcohol or drugs unless the County determines, at its discretion, that the accident could not have been caused by alcohol or drug use.

***The driver will submit to an alcohol test within two (2) hours, and a controlled substances test within 32 hours of the accident. The driver must advise the collection site and alcohol testing personnel that the test being required is a County required test not a mandated DOT test.*

4. Procedures for Post-Accident Testing

- Treat any injury first. The physical health of the driver, responsible employee, or general public is always a higher priority than the collection of test specimen.
- Allow local law enforcement to conduct their investigation. The police may require a breath alcohol test or blood specimen to be drawn for a legal determination.
- A controlled substances and alcohol test is needed as much to protect the driver as it is to determine facts for Kitsap County.
- If the driver is injured and unable to consent to a urine sample, wait until the treating physician determines the driver is able to understand the request, sign the necessary forms, and provide a sample. ●
- The specimen should be collected as soon as possible after the accident.
 - Alcohol testing must occur within two (2) hours of the accident. If the collection occurs after two (2) hours but within eight (8) hours.
 - Urine collections for controlled substances must occur within 32 hours of the accident. If the collection does not occur within this time frame.
- Collect and document as many facts and observations relating to the accident as possible immediately following the accident. Accident investigators, either employees or contracted individuals, should be used to accurately document critical information. Note the time and date of both the accident and specimen collection.
- If the driver has been medically examined, post-accident, the driver must receive a return to work clearance form from the examining medical practitioner before returning to work.

5. Random Testing

The County is using a consortium/third party administrator to facilitate random selection of drivers for testing, and notification to the County of the driver(s) selected for testing. The consortium/third party administrator is:

A WorkSAFE Service, Inc. | 1696 Capitol St NE | Salem OR 97301 | (503) 391-9363

6. Random Testing Procedures

Drivers will be subject to random alcohol and controlled substance testing under the following program:

- Random selection of drivers will be made utilizing a scientifically valid computer-based random number generator that is matched with drivers' Social Security, Commercial Driver's License (CDL), or Learner's Permit (CLP) numbers.

- Each driver shall have an equal chance of being drawn each time selections are made.
- Selections for testing are unannounced and reasonably spread throughout the calendar year.
- In accordance with FMCSA, random selections for controlled substances is conducted at not less than the minimum annual selection rate of 50% of the average number of driver positions, as amended. The current minimum annual selection rate for alcohol testing is 10% of the average number of driver positions. Random selection rates are subject to change within the FMCSA, as amended.
- A driver shall only be tested for alcohol just before, during, or after performing safety sensitive functions. Controlled substances testing can occur anytime during the driver's work day.
- Once a driver is notified of selection for random alcohol and/or controlled substances testing, he/she shall proceed to the test site immediately.
- A Supervisor shall transport the driver to testing.
- All time spent on testing, including travel time to and from the testing center, is paid time, including overtime, if applicable.

7. Reasonable Suspicion Testing

Reasonable suspicion drug testing is authorized when the supervisor's observation of the driver's behavior occurs anytime during the workday. When reasonable suspicion exists, a driver will be questioned and observed. A decision to refer a driver for alcohol and/or controlled substance testing will be based on eyewitness reports, facts of the event, and observed physical and behavioral characteristics of the driver. When possible, verification of the driver's condition by another supervisor who has received training in recognition of signs and symptoms of alcohol and/or controlled substances abuse, should take place. Supervisors shall record, in writing, the observations that led to this conclusion. The report shall be provided to the affected department head/elected official and Human Resources.

A driver shall only be tested for alcohol just before, during, or after performing safety sensitive functions. Controlled substances testing can occur anytime during the driver's work day.

8. Reasonable Testing Procedures

- Drivers required to be tested under reasonable suspicion will be removed from duty pending the outcome of the test result(s). Supervisors who are unable to obtain a reasonable suspicion test because the MRO is not available must not permit a driver to remain on duty. The driver shall remain off duty for a minimum of 24 hours from the time of reasonable suspicion.
- Drivers will be transported to the testing facility by a supervisor. Arrangements will be made to have the driver transported to their residence after testing, or attempted testing. If the driver refuses transportation and attempts to drive his/her vehicle, the supervisor shall notify law enforcement.
- Alcohol and controlled substance tests must be completed as soon as is possible, and preferably within two (2) hours of the observation. Attempts to test shall continue for up to eight (8) hours following the observation. After eight (8) hours the attempt to test will cease. The supervisor must record the reasons for any test delays or denials.

- All time spent on testing, including travel time to and from the testing center, is paid time, including overtime, if applicable.
- Supervisors and any County representative that may be expected to serve in a supervisory capacity, and who may be required to make a reasonable suspicion determination, must have received at least 60 minutes of training on the indications of probable drug use and an additional 60 minute training on the indicators of probable alcohol misuse. Only those individuals who have received this training are qualified to make these decisions.

G. Return-to-Duty

The County is not required to continue the employment of a driver who engages in prohibited behavior regarding alcohol misuse or controlled substances use. In the event the County permits the driver to return to the performance of safety sensitive functions, the driver must undergo a return-to-duty test. The test cannot occur until after a SAP has determined that the driver has successfully complied with prescribed education and/or treatment. The driver must have verified negative results on a return-to-duty test.

Drivers who are permitted to return to work after participating in a SAP recommended rehabilitation program are subject to unannounced follow-up alcohol and/or controlled substance testing, as directed by the SAP. The number and frequency of the tests is determined by the SAP but must consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty and may continue for up to five (5) years. Return-to-duty and follow-up testing is at the driver's expense.

Drivers who are permitted to return to work, following adherence to all return-to-work requirements, as defined above, will be required to enter into a Last Chance Agreement

***For any driver who voluntarily self admits to alcohol and drug problems prior to performing safety sensitive functions or violating the regulations and/or County Drug and Alcohol policy, and who requests assistance in resolving problems, and who follow through with all associated requirements as determined through evaluation by a SAP, may be required to enter into a Last Chance Agreement. **County requirement, not a DOT mandated requirement.*

H. Failure to Cooperate

Drivers who are subject to this policy are expected to comply fully with any required testing. Failure to do so, including refusing to sign consent forms or refusing to test, obstructing the testing process, failing to be available for a required test, failing to provide an adequate sample for testing, attempting to adulterate or substitute a specimen, failure to empty pockets or wash hands as requested by collection site personnel, refusing to permit an observed collection, or possessing or wearing a prosthetic or other device that could be used to interfere with the collection process will cause the driver to be immediately relieved from performing safety-sensitive functions, and will also be considered a violation of County policy that will subject the driver to discipline, up to and including termination of employment.

***The County also reserves the right to involve law enforcement officials for any conduct that the County believes might be in violation of state or federal law. **County requirement, not a DOT mandated requirement.*

I. Confidentiality

Fundamental to Kitsap County's application of the laws regarding alcohol and controlled substances testing is the commitment to respect the privacy and reasonable concerns of drivers who are required to be tested for alcohol and controlled substances use. The County takes extensive measures to ensure that all records, documents, and related materials concerning who has been tested, why they were tested, and the results of those tests are held in strictest confidence, and that all meetings and conversations relating to alcohol and controlled substances testing are treated as confidential. Records required under this policy, including test results, will be maintained in a secure location with controlled access. Each driver, upon written request, shall be entitled to receive copies of his/her own records, and to have copies of his/her records made available to any subsequent employer. Information may also be disclosed to the relevant state or federal agencies, or in connection with judicial, administrative, or related proceedings (e.g., grievances and arbitration) initiated by or behalf of the driver.

In addition, the following personal information collected and maintained shall be reported to the Commercial Driver's License Drug and Alcohol Clearinghouse by the MRO or the Company beginning January 6, 2020:

- A verified positive, adulterated, or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to any test required under Part 382;
- An employer's report of actual knowledge:
 - On duty alcohol use;
 - Pre-duty alcohol use;
 - Alcohol use following an accident;
 - Controlled substance use;
- A substance abuse professional (SAP) report of the successful completion of the return-to-duty process;
- Negative return-to-duty test(s); and
- An employer's report of completion of follow-up testing.

Additionally, as a condition of continuous employment, a driver must provide a written consent for multiple years or for duration of employment, granting the Company access to conduct limited queries of the above information on an annual basis. If any of the above information is found in the Clearinghouse, the driver within 24 hours, must submit a specific electronic consent through the Clearinghouse granting the Company access this information.

J. Evaluation and Referral

DOT regulations require that any driver who violates the alcohol and controlled substances rules of 49 CFR Part 382 be advised of available evaluation resources and be evaluated by a SAP. The

driver must complete an appropriate education and/or treatment program before being eligible to return-to-safety sensitive duty.

Before returning to performing safety-sensitive functions for **any** DOT employer a driver must be tested for controlled substances with a verified negative controlled substances test result and/or alcohol with a test result less than 0.02 alcohol concentration. The driver will be subject to follow-up testing of at least six tests in the first 12 months of returning to duty, and follow-up testing may continue for five years. All return-to-duty and follow-up drug tests will be required to be collected as same gender direct observation collections.

K. Consequences

As a condition of employment, all drivers covered by this Policy agree to comply with the terms and conditions of this Policy. Any driver who engages in any of the prohibitions listed in this Policy may be deemed to have failed to satisfy a condition necessary for continued employment and said employment may be terminated.

Under normal circumstances, drivers violating this Policy or federal regulations will be suspended from performing any safety-sensitive functions with a commercial motor vehicle, as defined by this Policy, and will be subject to disciplinary action up to and including termination of employment.

***Under some circumstances, however, the County may agree to return a driver to performing these functions following treatment and rehabilitation. Where this occurs, the driver must pay the cost of the pre-treatment evaluation and any treatment. The County medical plan, when available to the driver, may cover a portion of the evaluation and treatment costs, however, uncovered costs remain the driver's responsibility to pay. The County will pay the cost of any follow-up controlled substances or alcohol testing required by 49 CFR Part 382.*

Where, at the County's discretion, a driver is returned to work, the driver will be required to enter into a Last Chance Agreement and to submit to unannounced follow-up testing for controlled substances and/or alcohol as directed by the Substance Abuse Professional in order to continue to perform safety-sensitive functions and operating a commercial motor vehicle requiring a CDL.

The County reserves the right to take disciplinary action up to and including termination for violation of the County drug and alcohol policy where and when the County deems it appropriate.

L. Record Retention

Records of alcohol misuse and controlled substance use are maintained as confidential files by the Human Resources Department, with restricted access. As required by law, the records are retained as follows:

- Records of any negative test results are retained for a minimum of one (1) year.

- Records related to the test collection process are maintained for two (2) years.
- The following records are maintained for a minimum of five (5) years:
 - Records of any driver alcohol test results indicating an alcohol concentration level of 0.02 or greater;
 - Documentation of refusals to take required alcohol or controlled substances tests;
 - Verified controlled substances test results;
 - Equipment calibration documentation; and
 - Documentation of driver evaluations and referrals.
- Records relating to the education and training of supervisors are maintained for at least two (2) years after the supervisor ceases to be a supervisor or covered employee.

All records of verified positive test results are forwarded to the Human Resources Department and are maintained as confidential files with only authorized individuals who have a “need-to-know” have access to them.

M. Driver Access to Records

Any driver who is the subject of a controlled substances or alcohol test may, upon written request to the Human Resources Department, have access to any records relating to:

- The driver’s controlled substances or alcohol test; and
- The results of any relevant certification, review, or revocation-of-certification proceedings.

N. Training and Referral

Educational materials that explain the requirements of the law and County policies and procedures with respect to meeting the federal requirements as well as written notice of their availability are provided to each covered driver and union representatives of covered drivers. The educational materials also include information concerning the effects of alcohol and controlled substances use on an individual’s health, work and personal life, signs and symptoms of a drug or alcohol problem, and the methods for intervening when an alcohol or drug problem is suspected.

Because supervisors play a key role in establishing and monitoring a drug and alcohol-free workplace, the County requires and provides training to assist supervisors and managers in recognizing and addressing alcohol and the use of controlled substances by drivers. Supervisory training is provided as soon as possible after a person assumes responsibility for drivers in safety sensitive positions.

CERTIFICATE OF RECEIPT

I hereby certify that on the date shown below I received and read a copy of Kitsap County Human Resources Drug and Alcohol Policy for Use With FMCSA/DOT-Regulated Employees, consisting of twenty-one (21) pages including these Certificates of Receipt, and a copy of drug and alcohol awareness training materials. I understand and agree to comply with this policy, including any required alcohol or controlled substance testing.

DRIVER - PRINT NAME

DRIVER - SIGNATURE

DATED: _____

(Original to be kept in employee personnel file. Employee to receive duplicate copy)