

**COPY**

**WEBB COUNTY  
POLICY  
FOR  
DRUG, ALCOHOL,  
AND OTHER PROHIBITED SUBSTANCES**

AMENDED: JUNE 12, 2017  
AMENDED: FEBRUARY, 2010  
ADOPTED: APRIL, 2005

## **DEFINITIONS**

As used in this policy:

***Accident*** means any occurrence associated with the operation of a County-owned or operated vehicle or the operation of any other vehicle in the furtherance of County business or operations, if the vehicle makes contact with a person or if the vehicle collides with any other vehicle, object or structure such that any visible damage results to either vehicle, the object or the structure. "Accident" as defined herein may differ from the DOT definition.

***Air blank.*** A reading by an EBT of ambient air containing no alcohol. (In EBTs using chromatography technology, a reading of the device's internal standard.)

***Alcohol*** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

***Alcohol concentration*** (or content) 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 (EBT).

***Alcohol use*** means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

***Canceled or invalid test.*** In drug testing, a drug test that has been declared invalid by a MRO. A canceled test is neither a positive nor a negative test. A sample that has been rejected for testing by a laboratory is treated the same as a canceled test. In alcohol testing, an "invalid" test is one for which no valid result can be obtained. It is neither a positive nor a negative test.

***Chain of custody.*** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition and storage of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form be used from the time of collection to receipt by the laboratory. Chain of custody forms account for the sample or sample aliquot within the laboratory.

***Collection site*** means a place where individuals present themselves for the purpose of providing body fluid or breath samples to be analyzed for specific controlled substances or alcohol. A collection site will have all the required personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation of the samples to the testing laboratory, or for alcohol testing.

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

- 1) 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
- 2) Has a gross vehicle weight rating of 26,001 or more pounds; or

- 3) Is designed to transport 16 or more passengers, including the driver; or
- 4) 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

***Contraband*** means any article, the possession of which on County premises or while on County business causes an employee to be in violation of County policies. Contraband includes illegal drugs and alcoholic beverages, drug paraphernalia, lethal weapons, firearms, explosives, incendiaries, stolen property, and counterfeit money.

***Controlled substances*** means any drug, substance, or immediate precursor listed in Schedules I-V or Penalty Groups 1-4 of the Controlled Substances Act of 1988 as it may be revised from time to time.

***Covered employee*** means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to DOT Drug and Alcohol Rules or who is otherwise subject to testing under this policy.

***HHS*** means the Department of Health and Human Services.

***DOT agency*** means an agency of the United States Department of Transportation administering regulations requiring alcohol and drug testing.

***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 an employer who operates a commercial motor vehicle at the direction of, or with the consent of, an employer.

***Drug test or testing*** means the scientific analysis of urine, blood, breath, saliva, hair, tissue or other specimens of the human body for the purpose of detecting a drug or alcohol. Drugs that will also be tested for, ( in addition to prohibited drugs such as Amphetamines, Cannabinoids, Cocaine, Opiates, & Phencyclidine), Webb County may also test for: K2, alcohol, Benzodiazepines, Barbiturates, Methadone, Propoxyphene, Oxycodone, Meperidine, Tramadol, Fentanyl, Sufentanil, Ketamine, Zolpidem, and Buprenorphine.

***EBT (or evidential breath testing device)***. An EBT approved by National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and places on NHTSA's "Conforming Products List Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming with the model specification available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs.

***Employee*** means any employee, agent, officer, or representative of the County. Any contractor or subcontractor performing work on behalf of the County is also expected to comply with this policy.

**Employer** means any person who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. It also includes an employer's agents, officers, and representatives.

**Inhalant Abuse** means the deliberate concentration and inhalation of common products found in homes to get high.

**Illegal drug** means any drug in any detectable amount which is not legally obtainable; any drug which is legally obtainable but has not been legally obtained; any prescribed drug not legally obtained; any prescribed drug not being used for the prescribed purpose; any over-the-counter drug being used at a dosage level different than recommended by the manufacturer or being used for a purpose other than intended by the manufacturer; and any drug being used for a purpose not in accordance with bona fide medical therapy. Examples of illegal drugs are cannabis substances such as marijuana and hashish, cocaine, heroin, phencyclidine (PCP), and so-called designer drugs and look-alike drugs.

**Medical Review Officer (MRO)** means a licensed doctor of medicine or osteopathy (MD or DO) with knowledge of substance abuse disorders. The MRO has the knowledge and medical training to interpret and evaluate an individual positive test result together with his or her medical history and any other relevant biomedical information.

**Medically unqualified to work** means the condition of a person who is unfit to work by reason of an impairing or potentially impairing medical condition such as, but not limited to, the use of illegal drugs or alcohol.

**Performing a safety-sensitive function** means an employee 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.

**Prohibited Drugs** means Marijuana, Cocaine, Amphetamines, Opiates, and Phencyclidine and any Illegal Drug.

**Possession** is also meant to include the presence in the body system of any detectable amount of drug, or in the case of alcohol, a test result of 0.04 or greater.

**Reasonable cause** means a belief that the actions, appearance, or conduct of a person are indicative of the use of a controlled substance or alcohol. Such a belief is based on objective, articulated facts. A reasonable cause or "for cause" situation is any situation in which an employee's job performance is in conflict with established job standards relating to safety and efficiency. The term includes accidents, near accidents, erratic conduct suggestive of drug or alcohol use, any abnormal or unsafe performance behaviors, and unexplained deviation from productivity.

***Refuse to submit to an alcohol or controlled substances test*** means that a safety sensitive employee:

- 1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with DOT regulations;
- 2) Fails to provide adequate urine for controlled substances testing without a valid medical explanation after receiving notification of DOT regulations; or
- 3) Engages in conduct that clearly obstructs the testing process.

***Safety sensitive employee*** DOT defines as:

- 1) Any employee who operates a revenue service vehicle, whether or not the vehicle is in service (operators, shop attendants, mechanics and route supervisors).
- 2) Any employee who operates a non-revenue service vehicle that is required to be operated by a holder of a CDL.
- 3) Any employee who controls the dispatch or movement of a revenue service vehicle or equipment used in revenue service. (Dispatchers)
- 4) Any employee who maintains a revenue service vehicle, including any act which repairs, provides upkeep, or keeps the vehicle operational (does not include employees who provide only interior/exterior cleaning). (Mechanics, Shop Attendants)

***Screening test*** in alcohol testing means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substances testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

***Substance Abuse Professional (SAP)*** means a licensed physician (MD or DO), or a licensed or NAADACCC (National Association of Alcoholism and Drug Abuse Counselors Certification Commission) certified psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

***Split-sample*** is the packaging of urine samples for drug testing into two vials (one 30 ml and the other 15 ml). These vials are filled and secured with tamper evident tape in the presence of the donor, and then initialed by the donor.

***Under the influence*** means a condition in which a person is affected by a drug or alcohol in any detectable manner. The symptoms or influence are not confined to those consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or

difficulty in maintaining balance. A determination of being under the influence can be established by a professional opinion, a scientifically valid test such as urinalysis, breath analysis, or blood analysis and in some cases by the opinion of a layperson.

*Verified negative (drug test results)* means a drug test result reviewed by a Medical Review Officer and determined to have no evidence of prohibited drug use.

## **PURPOSE**

The County has established this policy to assist in protecting the traveling public and its employees. The County also intends through this policy to reduce accidents, fatalities, injuries, and property damage that may result from employee's use of controlled substances or misuse of alcohol.

This policy is also intended to promote an overall safe, healthful, and efficient working environment for all employees. Being under the influence of a controlled substance or alcohol on the job poses serious safety and health risks to the user and to all those who work with the user. The use, sale, purchase, transfer, or possession of an illegal drug in the workplace, and the use, possession, or being under the influence of alcohol also poses unacceptable risks for safe, healthful, and efficient operations. The County also believes it has the obligation and the right to protect the County's property, information, equipment, operations, and reputation.

The County recognizes its obligations to the public for the provision of services that are free of the influence of controlled substances and alcohol, and will endeavor through this policy to maintain such safe, efficient, and professional services.

The County also understands that from time to time it may enter into a contractual agreement with other governmental entities or firms, and that entity or firm may require a controlled substances and alcohol program.

Furthermore, the County takes note of its obligation to comply with US DOT regulations relating to controlled substances and alcohol use. The County will ensure that testing for controlled or prohibited substances and alcohol conforms with USDOT workplace testing requirements.

The County's position is that the sale, purchase, transfer, concealment, transportation, use, or possession of contraband by any employee of the County represents a threat to the health, safety, and well of its employees, customers, clients, and property, as well as to the traveling public and is therefore strictly prohibited.

## **APPLICABILITY**

This policy applies to every person, regardless of job title, within the County who falls under DOT's definition of a safety-sensitive employee and certain other employees. Additionally, this policy is applicable to any position involving job duties which, if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity or composure, may result in mistakes

that could present a real or imminent threat to the personal health and safety of the employee, co-workers, or the public. Such positions are those which include any of the following as part of their regularly assigned job duties:

1. Any employee who operates a revenue service vehicle, whether or not the vehicle is in service.
2. Any employee who operates a non-revenue service vehicle which is required to be operated by a holder of a CDL.
3. Any employee who controls dispatch or movement of a revenue service vehicle or equipment used in revenue service.
4. Any employee who maintains a County vehicle, including any act which repairs, provides upkeep to a vehicle, or other process which keeps the vehicle operational (does not include employees who provide only interior/exterior cleaning).
5. Any employee who operates any vehicle in the furtherance of County business or operations including, but not limited to, a privately owned vehicle.
6. All certified peace officers, all certified detention officers, all personnel whose job duties include functions typically performed by peace officers or detention officers, and any employee who carries or may be called upon to use a firearm.
7. Any employee of the Webb County Sheriff's Department who has access to any secured area of the Webb County Law Enforcement Center, the Webb County Justice Center, or any other building where inmates or detainees are or may be held.
8. Any employee who provides security services for any Webb County building or premises.
9. Any employee who transports or has custody of an inmate or a detainee, or of a person who is the subject of a mental health or chemical dependency proceeding.
10. Personnel who operate machines, handle hazardous chemicals or who are required to wear personal protective equipment to perform their duties. Machinery is defined as equipment that is power-driven either by a combustion engine or electricity. As used herein, "machinery" shall include, but is not limited to, the following: edger, mower, weed eater, tractor, brush hog, power drill, chainsaw, jigsaw, circular saw, and heavy equipment. "Machinery" does not include office computers, facsimile machines, copiers, and other such office equipment. "Hazardous chemicals" are those chemicals a manufacturer is required to list on a Material Safety Data Sheet (MSDS) pursuant to the Texas Hazard Communication Act, Chapter 502 of the Texas Health and Safety Code.
11. Personnel who supervise any of the foregoing.

Each department shall designate each of its positions as "safety-sensitive" or "non-safety-sensitive" and shall provide this list of designations to Human Resources. Human Resources shall maintain a master list of safety-sensitive positions subject to random drug and alcohol testing. All employees holding a slot designated as safety-sensitive by this policy will be notified in writing that his/her position is considered safety-sensitive and that s/he is subject to random drug and alcohol testing.

At his/her option, the Webb County Sheriff may require random drug and alcohol testing for peace officers and detention officers on a more frequent basis or in higher numbers than for other safety-sensitive employees. The Sheriff may test for Amphetamines, Cannabinoids, Cocaine, Poiates, Phencyclidine, K2, alcohol, Benzodiazepines, Barbiturates, Methadone, Propoxyphene, Oxycodone, Meperedine, Tramadol, Fentanyl, Sufentanil, Ketamine , Zolpidem, and Buprenorphine utilizing urine testing, breath alcohol testing, hair follicle testing and/or any other manner as referenced in the "Definitions-Drug Testing" and/or any other form of testing that may be available at the time that meets comparable methodology in testing.

All DOT defined safety-sensitive employees must submit to all drug testing and/or alcohol tests that the County administers in accordance with Part 655 of 49 CFR, as amended, of the Federal Register. In addition, the County will ensure that testing procedures will be completed in accordance with 49 CFR Part 40, as amended.

DOT requires that all safety-sensitive employees in a DOT defined accident must remain readily available for drug/alcohol testing. Employees may not leave the scene of the accident except for necessary medical treatment or to report for drug/alcohol testing as arranged by the County. DOT also mandates that the employee not use alcohol within eight hours after an accident or until tested (for employees required to be tested). An employee's failure to remain at the scene of the accident or to immediately report for testing will be deemed as a refusal to test and be treated as such.

DOT does recognize that an employee involved in an accident must complete the accident investigation process or may be injured in the accident, therefore any drug or alcohol testing is stayed until such time as resolution of the accident or receives medical attention following an accident.

DOT requires that a post-accident alcohol test be performed within two hours after an accident. If an alcohol test cannot be performed within two hours after an accident, a report must be filed as to why the attempt was unsuccessful. After 8 hours all attempts must cease and the report must be updated with reason why the alcohol test was not performed.

DOT requires that a post-accident drug test be performed within thirty-two hours after an accident. If a drug test cannot be performed within 32 hours after an accident, all attempts must cease and a report must be filed as to why the drug test was not performed.

DOT requires that when a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of the reason, and employee has not been



in the random selection pool during that time, the employer shall ensure that the employee takes a drug test with a verified negative result before that employee is returned to a safety sensitive function.

The provisions of this policy are specified in accordance to DOT 49 CFR, Part 40, Part 655, as amended. Any provision described in this policy that is not in accordance with DOT and is a policy of the County will be so noted. This policy is applicable in addition to, not in lieu of the provision that apply to Non-Safety Sensitive Employees.

Notwithstanding the foregoing, the County requires that post-accident testing be conducted within two hours of the accident unless exigent circumstances preclude such testing. Such exigent circumstances shall include necessity of medical treatment, unavailability of testing facilities or personnel, and other such circumstances. Failure to report for testing within two hours absent exigent circumstances shall be deemed a refusal to test.

### **PRESCRIBED DRUGS**

The County reserves the right at all times to judge the effect that a legal drug may have upon an employee's work performance and to restrict the employee's work activity or presence at the workplace accordingly. It also reserves the right to have a physician of its own choice determine if the medication at the prescribed dosage produces hazardous effects, and may restrict the employee's work activity. All employees who are taking a prescribed medication that may affect their job performance must report the drug and dosage to their supervisor. The supervisor will report it to the Medical Review Officer for evaluation.

If the County/Sheriff requests the donor/employee to meet with the MRO, the donor/employee must make arrangement to meet with the MRO within the first 24 hours of being notified. The MRO may issue a report to the County/Sheriff regarding the specific medication the donor may be taking and/or initially tests positive for a prohibited substance/medication. However, even if cleared by prescription/valid medical reason, the County/Sheriff may take any appropriate decision regarding the valid prescribed medication despite being cleared as "negative" by the MRO.

Failure to comply with this requisite may result in disciplinary action, including termination.

### **PROHIBITED ACTIVITIES**

#### **Drugs:**

As stated in Part 655, as amended, DOT drug rules prohibit the unauthorized use of any DOT-specified controlled substance. In addition, the use of a prohibited drug by safety-sensitive employees is prohibited on or off duty. Prohibited drugs include:

Marijuana  
Cocaine  
Amphetamines  
Opiates (including heroin)  
Phencyclidine (PCP)  
K2  
Designer drugs, look alike drugs and so called drugs like: Ayahuasca, DMT, GHB, Hallucinogens, Heroin, Inhalants, Ketamine, Khat, Kratom, LSD, MDMA (Ecstasy/Molly), Mescaline(Peyote), Methamphetamine, Over-the-Counter Cough/Cold Medicines(Dextromethorphan or DXM), Psilocybin, Rohypnol(Flunitrazapan), Salvia, Steroids(Anabolic), Synthetic Cannabinoids, Synthetic Cathinones(Bath Salts).

### **ADDITIONAL PROHIBITED ACTIVITY**

#### **Inhalants:**

It is the policy of the County that the intentional use of inhalants for the purpose of altering one's mood or other improper purpose is prohibited.

#### **Alcohol:**

As stated in Part 655, DOT alcohol rules prohibit employees from performing safety functions:

- while using alcohol
- while having possession of alcohol
- within four hours of consuming alcohol
- while having an alcohol breath concentration of **0.02** or greater

In addition, DOT alcohol rules prohibit covered employees from consuming alcohol while "on-call" for a safety sensitive procedure. When an on-call employee is contacted to report to perform a safety sensitive job function, the employee will be given the opportunity to acknowledge the use of alcohol and his or her inability to perform a safety sensitive job.

A safety-sensitive employee who has a breath alcohol concentration of 0.040 or greater is considered to have a positive alcohol test result, is medically unqualified to work, and is subject to disciplinary action, up to and including involuntary termination. In addition, a safety-sensitive employee who has an alcohol concentration of 0.020-0.039 in his or her breath is also considered medically unqualified to work and will be removed from the safety sensitive function being performed for a minimum of eight (8) hours without pay.

## **Drug Testing**

DOT dictates (Part 655) that the County follow the following steps and must administer urine screening of safety-sensitive employees for prohibited drugs under the following circumstances:

*Pre-employment Test* - The County will not allow an applicant to perform a safety-sensitive function unless the applicant submits to and has a verified negative drug test. If the first test is canceled, the applicant must again submit to the drug test and have a verified negative before performing a safety sensitive function. Any sample which is suspect due to substitution or adulteration will be considered as a positive drug screen and the applicant will not be considered for employment at that time. If an applicant has a positive drug test result, DOT requires that this applicant be evaluated by a substance abuse professional (SAP) and follow through on the SAP recommendations before he/she may be considered for a DOT safety-sensitive position.

The County will not transfer a non-safety-sensitive employee to a safety-sensitive function until the employee has submitted to and has a verified negative drug test.

*Reasonable Suspicion Testing* - The County will perform drug testing on safety-sensitive employees whom the County has reasonable suspicion that the employee has used a prohibited drug. The behavior or conduct that causes reasonable suspicion must be observed by a supervisor or a County official who has been trained in the detection of the signs and symptoms of drug use.

*Random Testing* - The County will randomly select covered employees for unannounced drug testing. The selection of employees will be made by a random-number table or a computer-based random generator. All employees notified of their selection for random testing will report immediately for testing.

These random tests will be spread out during the entire year and is conducted on all days and hours of County business. Each covered employee shall have an equal chance of being tested each time selections are made and there is no discretion by managers to circumvent this procedure.

*Post-Accident Testing* - The County will perform drug testing on safety-sensitive employees involved in an accident (see definition of accident). The County may also test any safety-sensitive employee whose performance could have contributed to the accident.

*Return-to-Duty* - The County will conduct testing after an individual has committed prohibited conduct (i.e., refused to submit to a drug test, has a verified positive drug test result) and has been evaluated by a substance abuse professional (SAP) and has followed through on the SAP's recommendations, but before returning to perform safety-sensitive duties.

*Follow-up Testing* - The County will conduct testing at the frequency and duration as determined by the SAP who evaluated an employee who violated prohibited conduct but no less than six (6) tests during the first twelve (12) months after employee returns to duty.

All return-to-duty and follow-up testing will be conducted as specified in 49 CFR, Part 40, Subpart O.

*Overview of the urine collection process:*

Employees reporting for DOT regulated drug testing must present proper picture ID to the collector or be properly identified by an employer representative.

All drug specimen collections will use the split-sample methodology.

Employees tested under DOT regulations will be required to provide a specimen of 45 ml of urine. Employees will be allowed to provide this sample in privacy. If employee's previous sample was reported as dilute, showed signs indicating adulteration, or out of the temperature range without a verified medical explanation, DOT requires that this current specimen be provided under direct observation. Collection staff performing direct-observed collections must be of the same gender of the employee providing the specimen.

If the employee cannot provide a specimen, the employee is allowed up to three hours to produce the required sample and can consume up to 40 ounces of liquid. If the employee still cannot produce a sample, he or she will be referred to a physician for medical evaluation. If the physician can provide no medical reason for the employee's inability to provide a specimen, that employee will be subject to the same procedures as an individual who refuses to be tested.

Collected specimen will be packaged for shipment and labeled with tamper-evident tape in the presence of the employee.

**Alcohol Testing**

DOT dictates (Part 655) that the County follow the following steps and must administer a breath alcohol screening to safety-sensitive employees for prohibited alcohol use under the following circumstances:

*Reasonable Suspicion Testing* - The County will perform breath alcohol testing on safety-sensitive employees of whom the County has reasonable suspicion that the employee is under the influence of alcohol. The behavior or conduct that causes reasonable suspicion must be observed by a supervisor or a County official who has been trained in the detection of the signs and symptoms of alcohol misuse. Reasonable suspicion testing can only be performed just before, during, or just after the employee performs a safety-sensitive function.

*Random Testing* - The County will randomly select covered employees for unannounced breath alcohol testing. The selection of employees will be made by a random-number table or a computer-based random generator. All employees notified of their selection for random testing will report immediately for testing. Random testing will only be conducted just before, during, or just after the employee performs a safety-sensitive function.

*Post-Accident Testing* - The County will perform breath alcohol testing on safety-sensitive employees involved in an accident (see definition of "accident"). DOT mandates that the employee also not use alcohol within eight hours after an accident or until tested (for employees required to be tested). The County may also test any safety-sensitive employees whose performance could have contributed to the accident.

*Return-to-Duty* - The County will conduct testing after an individual has committed prohibited conduct (i.e., refused to submit to a breath alcohol test, has a breath alcohol test greater than .039) and has been evaluated by a substance abuse professional (SAP) and has followed through on the SAP's recommendations, but before returning to perform safety-sensitive duties.

*Follow-up Testing* - The County will conduct testing at the frequency and duration as determined by the SAP who evaluated an employee who violated prohibited conduct.

*Overview of alcohol breath collection:*

All DOT-mandated alcohol tests will be administered by a trained breath alcohol technician (BAT) or screening test technician (STT) using DOT approved testing devices and forms.

Employees reporting for DOT regulated alcohol testing must present proper picture ID to the collector or be properly identified by an employer representative.

The BAT must show the employee the breath alcohol results as displayed in the EBT.

An initial breath alcohol result of less than 0.020 will be considered a negative. If the breath alcohol test results are 0.020 or greater, a confirmation test must be conducted. All confirmation tests must be done using an EBT that prints out the results, date, time, sequential test number, and the name and serial number of the EBT. After a breath alcohol result of 0.020 or greater, a minimum of 15 minutes must pass before the confirmation test maybe given. During this wait, the employee must avoid eating, smoking, drinking, or putting anything in the mouth that may increase mouth alcohol. Before the confirmation test, the BAT will conduct an *air blank* in the EBT to ensure the instrument reads 0.00.

Confirmation results will be deemed to be the final test results. If the confirmation test is less than 0.020, a negative result will be reported. If the confirmation test is 0.040 or greater, the employee will be deemed medically unfit to work, in violation of DOT prohibited activities, and face involuntary termination.

DOT requires employees whose confirmation results are found to have an alcohol concentration of 0.020 to 0.039 be removed from the safety-sensitive position for at least 8 hours or until the start of the employees next shift (which ever is longest). The County reserves the right to require that the employee be removed from his or her safety position for a minimum of 24 hours without pay. In addition, The County reserves the right to require that the employee to submit to follow-up alcohol testing for a three month period after returning to work.

## **Testing Integrity**

### **Drug Testing:**

To ensure the accuracy and integrity of testing done under DOT authority, all specimen collections, analysis, and laboratory procedures will be according to DOT procedural protocols as stated in Part 40 of Title 49 of the Code of Federal Regulations.

The County or its contractor has developed written procedures and protocols for the collection and packaging of urine specimens for drug testing in accordance to DOT that include:

- procedures to ensure the correct identity of each employee at the time of testing;
- chain of custody procedures to ensure that the employee specimen is not tampered with;
- the use of federal urine collection forms; and
- proper training of collection staff.

To safeguard the validity of drug tests, the County will:

- use HHS certified Laboratories for the testing of urine samples submitted for drug testing;
- ensure the confirmation of all initial positive drug screens by gas chromatography/mass spectrometry (GC/MS);
- ensure the use of split-sample urine specimens;
- ensure that employees whose urine specimen tested positive for prohibited drugs will have the opportunity to meet with the MRO (Medical Review Officer) to investigate if there is a legitimate medical reason for the drug/drugs to be in the urine sample; and
- allow employees whose urine sample is confirmed positive for drugs to request, within 72 hours of being notified of their positive test result, that the MRO have the split-sample tested by another HHS-certified laboratory. If the split-sample test is confirmed positive for drugs, the employee is required to reimburse the County for the second test.

### **Alcohol testing:**

To ensure the accuracy and integrity of testing done under DOT authority, all breath test procedures and analysis will be according to DOT procedural protocols as stated in Part 40 of Title 49 of the Code of Federal Regulations.

These protocols provide for:

- administering tests by a trained breath alcohol technician (BAT);
- the use of DOT approved testing devices;
- the use of DOT approved forms; and
- calibration checks on regular basis.

### **Refusal to Test**

#### **Drug testing:**

Any person applying for a safety-sensitive position who refuses to provide a urine sample for a DOT regulated drug test, will not be considered for employment.

Any current employee who refuses to provide a urine sample for a DOT regulated drug test, will not be allowed to perform a safety-sensitive function and is subject to disciplinary action up to and including termination of employment. A refusal to submit to a drug test is defined as:

- not providing a 45 ml urine sample within 3 hours of appearing for the test (and allowed to drink up to 40 ounces of liquid);
- failure to provide a sample when there is not a medical explanation as why a sample could not be produced in that time frame;
- not reporting to the collection site in the allotted time (absent unusual circumstances, this will typically be within two hours of notification of the need to report or of the accident);
- failure to remain at the testing site until the testing process is complete;
- engaging in any conduct that obstructs the testing process;
- providing an adulterated urine sample;
- failure to cooperate with any part of the testing process;
- failure to permit monitoring or direct observation collection;
- failure to submit to a second test as directed by the collector or employer.

Any refusal to submit to DOT regulated drug test will be judged as an automatic positive drug test and treated as such.

### **Alcohol testing:**

Any employee who refuses to provide breath for a DOT regulated alcohol test will not be allowed to perform a safety-sensitive function and is subject to disciplinary action up to and including termination of employment. A refusal to submit to a breath alcohol test is defined as:

- not providing adequate breath sample (when there is not a medical explanation as to why the sample could not be produced);
- not reporting to the collection site in the allotted time;
- engaging in any conduct that obstructs the testing process;
- refusal to sign the certification at Step 2 of the Alcohol Testing Form; or
- failure to have a medical evaluation if required by the MRO.

Any refusal to submit to DOT regulated alcohol testing will be judged as an automatic positive alcohol test and treated as such.

### **Verified Positive Drug Test**

DOT states that any employee who has a report from the MRO of a verified positive drug test or if the employee refuses to submit to a drug test, will be removed from his or her safety-sensitive position. In addition, the employee will be referred to a substance abuse professional for evaluation. However, it is the County's policy that any employee who has a verified positive drug test result or refuses to submit to a drug test will face involuntary termination.

The County reserves the right to suspend without pay, for the duration of the investigation, any employee who is the subject of a drug-related inquiry by The County or a law enforcement agency.

If the County/Sheriff requests the donor/employee to meet with the MRO, the donor/employee must make arrangements to meet with the MRO within the first 24 hours of being notified that they need to meet with the MRO. The MRO may issue a report to the County/Sheriff regarding the specific medication the donor may be taking and/or initially tests positive for a prohibited substance/medication. However, even if cleared by prescription/valid medical reason, the County/Sheriff may take any appropriate decision regarding the valid prescribed medication despite being cleared as negative by the MRO.

Failure to comply with this requisite may result in disciplinary action, including termination.



## **Positive Alcohol Test**

DOT states that any employee who has a report of a confirmed positive breath alcohol test or if the employee refuses to submit to a breath alcohol test, will be removed from his or her safety-sensitive position and face disciplinary action. In addition, the employee will be referred to a substance abuse professional for evaluation. However, it is The County's policy that any employee who has a verified positive test result or refuses to submit to an alcohol test will face involuntary termination.

The County reserves the right to suspend without pay, for the duration of the investigation, any employee who is the subject of an alcohol-related inquiry by The County or a law enforcement agency.

If the County/Sheriff requests the donor/employee to meet with the MRO, the donor/employee must make arrangements to meet with the MRO within the first 24 hours of being notified that they need to meet with the MRO. The MRO may issue a report to the County/Sheriff regarding the specific medication the donor may be taking and/or initially tests positive for a prohibited substance/medication. However, even if cleared by prescription/valid medical reason, the County/Sheriff may take any appropriate decision regarding the valid prescribed medication despite being cleared as negative by the MRO.

Failure to comply with this requisite may result in disciplinary action, including termination.

## **RESPONSIBILITIES**

Individuals in supervisory positions are required, as soon as practical following an incident which requires drug or alcohol testing, to arrange for the collection and testing of specimens for drugs and/or alcohol. Failure to meet this responsibility shall result in disciplinary action, including possible termination of employment, depending upon the circumstances.

It is the policy of the County to remove any employee from performing a safety sensitive job function if that employee has voluntarily/involuntarily informed an employer representative of the use of illegal drugs or the consumption of alcohol just before, during or immediately after completing the safety sensitive function.

Upon removal of an employee from the safety sensitive job function, the employee's supervisor must inform the Webb County Risk Manager for further discussion and action as deemed necessary according to County policy and possible referral to the Employee Assistance Program.

The County reserves the right to require that any employee whose DOT-regulated drug test is reported as a dilute specimen to submit to submit another specimen for testing. Should the second specimen also be dilute, the County may require the employee to submit to medical evaluation in order to determine any reason for the urine to be dilute.

## **EMPLOYEE ASSISTANCE PROGRAM**

The County will provide to any employee, upon request and at no cost to the employee, information concerning local resources that are available for the treatment of drug and alcohol-related problems.

The County will also provide to each DOT-regulated employee who does not pass a drug screen or alcohol test a list of the available resource for evaluating and resolving problems associated with the misuse of alcohol and the use of illegal drugs. This list will include names, addresses, and telephone numbers of substance abuse professionals (SAP's) and other counseling and treatment programs.

The County will also conduct training programs for supervisory personnel that address specific, contemporaneous, physical, behavioral, and performance indicators of probable drug use or alcohol misuse. The training will also focus on intervention tactics, post testing procedures, and supervisory responsibility for the execution of the policy.

In addition, the County will provide training for covered employees on the effects and consequences of prohibited drug use/alcohol misuse on personal health, safety, on the work environment, and on the signs and symptoms which may indicate drug use/alcohol misuse, as well as a review of drug and alcohol testing and steps taken to protect the employee and the integrity of the testing process.

## **MEDICAL REVIEW OF DRUG TEST RESULTS**

Following DOT guidelines, the County will ensure that each confirmed positive drug test result is reviewed by a MRO. The purpose of the review will be to rule out the possibility of any alternative medical explanation for the confirmed positive test result.

The duties of the MRO will be to:

1. Review the results of all drug testing prior to being reported to the County.
2. Review and interpret each confirmed positive test result to determine if there is an alternative medical explanation for the confirmed positive test result and, as appropriate:
  - a. Conduct a medical interview with the individual tested. The donor/employee must make arrangements to interview with the MRO within the first 24 hours of being notified that they need to meet with the MRO.
  - b. Review the individual's medical history and any relevant biomedical factors.

- c. Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.
- d. Upon request of the employee, require the split sample to be analyzed by a different HHS-certified lab to determine the accuracy of the reported test result.
- e. Verify that the laboratory report and assessment are correct.

The following rules will govern MRO determination:

1. If the MRO determines after appropriate review that there is a legitimate medical explanation for the confirmed positive test result, the MRO will notify the appropriate County official of results, and results will be treated as a "negative" test result. The MRO may issue a report to the County/Sheriff regarding the specific medication the donor may be taking and/or initially tests positive for a prohibited substance/medication. However, even if cleared by prescription/valid medical reason, the County/Sheriff may take any appropriate decision including termination, regarding the valid prescribed medication despite being cleared by the MRO.
2. If the MRO determines after appropriate review that there is no legitimate explanation for the confirmed positive test result, the MRO will so inform the designated County official.
3. Based on a review of the laboratory inspection reports, chain quality assurance and quality control data, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances the MRO will conclude that the test is canceled.
4. For opiate positives, the County will also require the MRO to determine if there is clinical evidence in addition to the drug test of unauthorized use of any opium, opiate, or opium derivative. The clinical evidence may include a medical history and a physical examination.

### **REHABILITATION**

Rehabilitation in lieu of termination will be offered to an employee only when:

1. The employee has requested rehabilitation and the request is unrelated to selection for random testing, post-accident testing, reasonable-suspicion testing, or the identification of the employee as a violator of this policy.
2. It is the employee's first voluntary admission of drug/alcohol abuse.

The costs of rehabilitation will be paid for solely by the employee except that the employee may obtain reimbursement to the extent provided for in the County's medical benefits plan.

The rehabilitated employee will only be allowed to return to work with the written authorization of a medical physician and the Substance Abuse Professional.

After returning to work, the employee must continue in an after-care program and be subject to unannounced follow-up testing, based upon the advice of the Substance Abuse Professional.

### **APPEALS**

An employee whose test is reported as positive for a prohibited drug, will be asked in a confidential meeting or telephone conference with the MRO to offer an explanation. The purpose of the meeting or telephone conference will be to determine if there is any reason that a positive test could have resulted from some cause other than prohibited drug use, which is in violation of this policy.

If the employee is desirous of a second opinion on a drug test, they may request a retest of the same specimen by a different HHS-certified laboratory which has been approved by the County. The employee must submit the request within 72 hours of the receipt of the final test results from the MRO. The County will require reimbursement by the employee of the cost of shipment and analysis if the split specimen is confirmed positive. The retest must be performed using the same methods and techniques as the initial test. If the analysis of the split-sample fails to reconfirm the presence of the drug(s) found in the primary specimen, or if the split-specimen is unavailable, inadequate for testing or untestable, the MRO will cancel the test and report the cancellation and the reason for it to DOT, the employer, and the employee.

Any medical related information that the employee provides to the MRO will remain confidential and will not be made available to the County.

The employee may also request to review the findings of the drug or alcohol test with a licensed physician who is currently certified as a MRO. The costs related to this will be at the expense of the employee.

If the County determines that an appeal merits further inquiry, the County reserves the right to require that the employee be suspended without pay until the inquiry and the appeals process are completed. If the employee is cleared of any charges or violations of this policy, The County will reimburse back pay due the employee, up to a maximum of two weeks of regular pay.

### **CONFIDENTIALITY**

All employee information relating to drug and/or alcohol testing will be protected by the County as confidential unless otherwise required by law, or authorized in writing by the employee. There may be some instances where overriding public health or safety concerns may require the release of information otherwise considered confidential.

The County will ensure that no person will obtain the individual test results retained by the laboratory or the MRO, and the vendor will not release the individual test results of any employee to any person without first obtaining written authorization from the tested employee. Nothing in this paragraph will prohibit the vendor from releasing to designated County officials the information relevant to an employee's test results.

The County will ensure that only those persons on a need-to-know basis or those persons in management directly involved in the decision-making process will obtain any drug and/or alcohol testing information retained in files maintained by the County.

### **RECORD KEEPING**

Employees are entitled to obtain copies of any records pertaining to their own use of prohibited drugs and/or alcohol, including any records pertaining to their drug and/or alcohol tests.

All employee records are confidential and may be released only upon written consent of the employee, except that such information must be released regardless of consent to FTA or a State or Federal agency, upon request as part of an accident investigation. Statistical data related to drug and/or alcohol testing and rehabilitation that is not name-specific and training records must be made available to FTA or the appropriate State or Federal agency upon request.

The County will ensure that all records related to the administration and results of DOT drug and alcohol testing are maintained for a minimum period of 5 years, except that individual negative test results will be maintained for a minimum of 12 months. Records pertaining to the alcohol and drug collection process and training will be maintained for a period of 2 years.

The drug testing vendor and MRO will retain the reports of individual test results for a minimum of 5 years.

The County will retain in the employee's file such information that will indicate only the following:

1. That the employee submitted to a drug test.
2. The date and location of the test.
3. The identity of the firm performing the test.
4. Whether the test finding was positive or "negative".

### **ADMINISTRATION**

The duties and responsibilities of the County in connection with this policy shall be discharged by the Risk Management Department unless otherwise indicated.

**NOTIFICATIONS**

The County will notify employees of this policy by providing a copy to each County department. That department shall distribute copies to its employees who will acknowledge in writing the employee's receipt and understanding of this policy.

The County will generally publicize this policy to the employees through memoranda, posted notices, and ongoing training programs.

The County will notify each employee of the results of his or her own drug and alcohol tests when the test results are positive. The employee will also be advised what drug class was discovered.

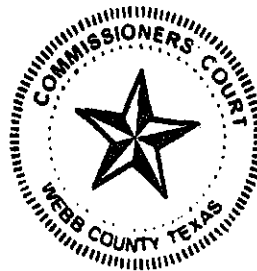
ADOPTED by the Webb County Commissioners Court at its meeting of April 25, 2005.

AMENDED by the Webb County Commissioners Court at its meeting of February 8, 2010.

AMENDED by the Webb County Commissioners Court at its meeting of June 12, 2017

ATTEST:

  
MARGARITA RAMIREZ IBARRA  
WEBB COUNTY CLERK



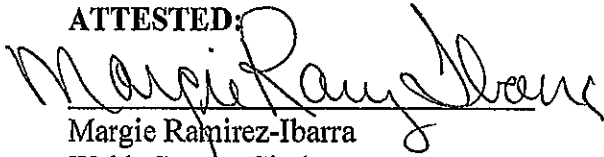
WEBB COUNTY



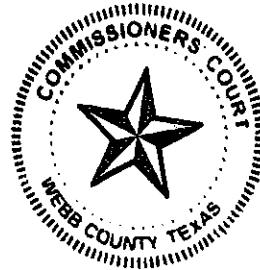
Tano E. Tijerina  
Webb County Judge

Date: 7/7/17

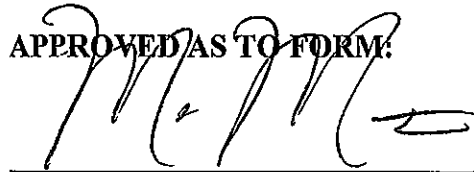
ATTESTED:



Margie Ramirez-Ibarra  
Webb County Clerk



APPROVED AS TO FORM:



Marco A. Montemayor  
Webb County Attorney

\*By law, the county attorney's office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

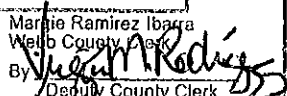
Passed and approved by the Webb County Commissioners Court  
On June 12, 2017, Item No. 29 .

I, Margie Ramirez Ibarra, County Clerk, Webb County, do hereby certify that this is a true and correct copy, as the same appears of record in my office.

Witness my hand and seal of office on

JUL 12 2017

Margie Ramirez Ibarra  
Webb County Clerk

By   
Deputy County Clerk

