

**PERSONNEL POLICIES AND PROCEDURES
OREGON MILITARY DEPARTMENT
AGP POLICY 99.100.02**

Subject: Drug/Alcohol Testing

Applicability: State Employees, Commercially Licensed Drivers, Temporaries and Final Applicants following a conditional job offer.

Effective Date: 1 January 2009 (revised, also replaces 99.100.03)

I. PURPOSE: To provide the public with a drug/alcohol free service environment, employees with a drug/alcohol free workplace and to establish a procedure for testing for alcohol and controlled substances. This policy covers all Oregon Military Department (OMD) employees as it relates to reasonable suspicion drug testing, employees whose duties require random drug testing and positions that require the possession of a Commercial Driver's License (CDL).

II. GENERAL POLICY: The OMD values employees who provide support to the Oregon National Guard and has both a responsibility and a commitment to ensure a drug/alcohol free work place and to provide a productive and safe work environment to its employees.

III. AUTHORITY: As it relates to CDLs, the Omnibus Transportation Employee Testing Act (OTETA) and 49 CFR part 382 mandates every employee whose duties require the possession of a CDL be subject to alcohol and controlled substance testing. In addition, 49 CFR part 40 prescribes how the individual alcohol and controlled substance tests are to be conducted.

IV. SCOPE: This policy will apply to all OMD employees, permanent, limited duration, seasonal, represented, management service, executive service, temporary and final applicants.

V. STANDARDS:

A. Types of Tests:

1. Pre-Employment Testing:

a. Controlled Substance: All applicants who are applying for positions that require a CDL, work in Security, Fire, or who work directly with juveniles, are required to submit to a pre-employment controlled substance test. An applicant whose urine specimen is diluted will no longer be considered for employment unless there is a documented medical reason or an additional specimen has been provided, tested and passed a drug screen within the time frame set by the OMD. An applicant, whose diluted specimen has any detectable amounts of controlled substances, will not be given the opportunity to retest.

2. Post-Accident Testing:

a. Alcohol: Any employee who while operating a Government/State motor vehicle or a Personal motor vehicle while on official State business and/or is involved in any accident which involves a fatality or injury requiring professional medical attention and/or is deemed by competent authority to be at fault shall be tested for alcohol by a breathalyzer within two (2) hours of the incident but no later than eight (8) hours after the incident. If the test required is not administered within (2) hours following the accident, the employee's supervisor shall prepare a report stating the reason the test was not administered promptly.

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If the test is not administered within eight (8) hours following the accident, all attempts to test shall cease and the supervisor shall prepare a report indicating why the test was not administered. All reports shall be forwarded to the OMD State Personnel Office (AGP) Safety Manager.

b. **Controlled Substances:** Any employee operating a Government/State motor vehicle or a Personal motor vehicle while on official State business and/or is involved in any accident which involves a fatality or injury requiring professional medical attention and/or is deemed to be at fault by competent authority, shall be tested for controlled substances. If the test required is not administered within 32 hours following the accident, the employee's supervisor shall prepare a written report stating the reasons the test was not promptly administered. All reports shall be forwarded to the OMD AGP Safety Manager.

3. Random Testing (CDL):

a. **Controlled Substances:** Random testing for controlled substances shall be administered at a minimum annual rate of 50 percent of the average number of positions requiring a commercial driver's license.

b. **Alcohol:** Random testing for alcohol shall be administered at a minimum rate of 25 percent of the average number of positions requiring a CDL and will be limited to time periods surrounding the performance of safety sensitive functions; e.g., the time period just before, during or after a driver performs safety sensitive functions.

c. **Selection:** The testing facility will randomly select individuals by a computerized program and notify the AGP Safety Manager, who will coordinate sending the employees for the random testing.

4. Reasonable Suspicion Testing:

a. **Controlled Substances:** An employee will be required to submit to a controlled substance test when the employer has reasonable suspicion, based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech, or body odors of an employee. Reasonable suspicion observations may also be based on the known chronic and/or withdrawal effects of controlled substances. ***This observation must be made by either an individual trained to make reasonable suspicion determinations or the opinion of a medical professional employed by the agency.*** The test must be administered within 32 hours following a reasonable suspicion determination.

b. **Alcohol Testing:** An employee may be required to submit to an alcohol test upon the concurrence of two (2) supervisors/managers when the employer has reasonable suspicion based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee. ***This observation must be made by either an individual trained to make reasonable suspicion determinations or the opinion of a medical professional employed by the agency.*** Testing for alcohol is to occur if

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possible within two (2) hours of the employee being notified of the test but in any case no later than eight (8) hours following the employee notification.

5. Return to Duty Testing:

a. **Controlled Substances:** Employees who test positive for controlled substance use shall undergo a return-to-duty controlled substance test with a verified negative result before returning to duty.

b. **Alcohol:** Employees who test positive for alcohol misuse shall undergo a return-to-duty test with a result indicating a Blood Alcohol Content (BAC) of less than .02 before returning to duty. Fire Fighter must have a BAC of 0.00.

6. Follow-up Testing:

a. **Controlled Substances:** Employees testing positive for controlled substances are subject to follow-up testing of not more than six (6) tests within the next twelve (12) months.

b. **CDL Holders:** Following a determination by a Substance Abuse Professional (SAP) that a commercially licensed driver is in need of assistance in resolving problems associated with the use of controlled substances, the driver will be subject to unannounced follow-up controlled substance testing at a frequency to be determined by the SAP. The frequency shall be no less than six (6) times in the first twelve (12) months following the date the driver returns to duty for a period not to exceed 60 months from the date the driver returns to duty.

c. **Alcohol Testing:** Employees testing positive for alcohol are subject to follow-up testing of not more than six (6) tests within the next 12 months.

7. Random Testing:

a. Employees shall be subject to random testing or reasonable suspicion testing for controlled substances and alcohol in accordance with Collective Bargaining Agreements and 49 CFR part 382.

b. Before directing an employee to submit to an alcohol or controlled substance test for reasonable suspicion, the employee shall be notified that the test is required pursuant to this policy. Notification may be given orally or in writing.

c. Results of all alcohol and controlled substance tests shall be treated in a confidential manner as mandated by federal and state law.

d. No employee shall refuse to submit to any alcohol or controlled substance test required under this policy or 49 CFR part 382. Any employee who refuses to submit to such testing shall be subject to disciplinary action up to and including termination.

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e. Employees shall adhere to the following prohibitions:

1. **Pre-Duty Use:** No employee shall be on duty or perform any safety sensitive functions within four (4) hours after consuming any substance containing alcohol, except as listed below.

a. Resource Protection Patrol Officers shall not report for duty within eight (8) hours after consuming alcohol in accordance with Air Force Regulation, Arming and Use of Force.

b. Fire Protection personnel shall not report for duty within twelve (12) hours after consuming alcohol or while under the influence of alcohol.

2. **Alcohol Possession:** No employee shall be on duty or operate a commercial motor vehicle while in possession of an open container of alcohol while on duty.

3. **On-Duty Use:** No employee shall use or be under the influence of alcohol while on duty with a BAC of .02 or greater. Fire Fighter must have a BAC of 0.00.

4. **Alcohol Use Following an Accident:** No employee required to take a post-accident alcohol test pursuant to this policy or 49 CFR part 382 shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.

5. **Controlled Substance Use:** No employee shall report for duty or remain on duty when the employee uses any controlled substance except when the use is pursuant to the instructions of a licensed physician who has advised the employee that the substance does not adversely affect the employee's abilities and/or adversely affect the employees ability to safely operate a commercial motor vehicle.

6. **Controlled Substance Testing:** No employee shall report for duty, or remain on duty if the employee tests or has tested positive for controlled substances.

B. Cost for Testing: The Department will pay for all testing except for follow-up testing and split specimen testing. Split specimen testing and follow-up testing will be paid by the effected employee at the time the test is taken. The employer will reimburse the employee for split specimen testing **IF** the test results are returned as negative.

VI. RESPONSIBILITIES:

A. The Adjutant General: Has overall responsibility to ensure the Department is in compliance with this policy and 49 CFR parts 382 and 40.

B. Director of State Personnel:

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1. Manages the implementation and ongoing testing as required through this policy, 49 CFR parts 382 and 40.
2. Will be on call when the AGP Safety Manager is unavailable.
3. Coordinate training for personnel to make reasonable suspicion determinations.

C. AGP Safety Manager:

1. Is responsible for the coordination of the Alcohol and Drug Testing Program through program directors, managers and supervisors.
2. Acts as the liaison between the Department and the vendor providing the services.
3. Manages the notification process to supervisors for employee testing.
4. Maintains records provided by the contractor as well as services provided by a SAP as required by 49 CFR part 40.
5. Must be available twenty-four (24) hours per day to assist the contractor when a positive test result is reported.
6. Receives the test results from the contractor and confidentially maintains them.
7. Confidentially reports positive test results to the supervisor and strictly limits the knowledge to those who have a need to know.
8. Will promote a drug/alcohol free workplace by circulating materials, which inform employees, directors, managers and supervisors of the effects of drug/alcohol impairment in the workplace and behavioral symptoms of impairment.

D. Directors, Managers and Supervisors:

1. Discuss with employees any behavior or job-performance factors that may indicate the use of drugs, alcohol or other violations of this policy and to suggest, when appropriate, that employees seek assistance through the Employee Assistance Program (EAP).
2. Direct all employees to comply with the provisions of the Drug/Alcohol Testing Policy.
3. Ensure individuals authorized to make reasonable suspicion determinations have been trained.
4. Ensure determinations of reasonable suspicion are based on specific, contemporaneous, articulated, reliable observations concerning the appearance, behavior, speech or body odor of the employee. Ensure the determination was made by an individual authorized and trained to make reasonable suspicion determinations.

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5. Any employee determined to have a blood alcohol concentration of .02 or above will, at a minimum, be immediately removed from duty for 24 hours.

6. Ensures if an employee is suspected of being incapable of performing their duties due to suspicion of drug or alcohol misuse that information is documented on the behavior, and does not allow the employee to continue to perform the function or remove the employee from the workplace. If an employee is removed from the workplace, the supervisor and/or manager should discuss the situation with the AGP Safety Manager to review appropriate action. Each situation involving reasonable suspicion will be handled on a case-by-case basis.

7. Ensures all candidates of classifications specified in paragraph V.A.1 that are offered employment complete a pre-employment drug test.

8. Ensures all employees are informed of their responsibilities regarding this policy and the drug/alcohol testing program and provided a copy of this policy.

E. Employees:

1. Are expected to report to work fit for duty and refrain from the use and misuse of controlled substances and alcohol as stated in this policy and while performing state business.

2. Report to their supervisor where prescription drug usage would affect public safety.

3. Shall comply with alcohol and drug testing policies and federal regulations.

F. Final Applicant:

1. Shall sign a release for a pre-employment drug test.

2. Shall pass a pre-employment drug screening test prior to beginning employment.

3. Shall not receive a final employment offer following a positive drug test.

4. May elect to retest within 48 hours of notice that the applicant's specimen was a diluted specimen.

a. The applicant will bear the cost of the second test if the results are positive for drugs.

b. The employer will bear the cost of the second test if the results are negative for drugs.

VII. TESTING PROCEDURES:

A. Drug Testing:

1. All elements of the alcohol and controlled substances testing program shall be provided through a private vendor selected through the competitive bidding process under contract with the Department of Administrative Services or the OMD. The

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facility providing the testing must be licensed and operated in accordance with ORS 438.010 and OAR 333-24-0305 through 0365.

2. Upon notification of selection of employees covered under random drug testing, the employee must cease their work, consistent with safety practices and proceed to the testing location as soon as possible.
3. Tests must not be delayed due to the OMD's need for continued operation, with the exception of State or National emergencies.
4. Drug testing procedures for employees include split specimen techniques. The employee provides a urine specimen that is subdivided into containers labeled as primary and split specimen in front of the employee during the collection process. A chain of custody document is completed and both specimens are forwarded to a certified laboratory under contract with the state. Only the primary specimen is used in the urinalysis. If the test is positive for one or more drugs a confirmation test will be performed. The split specimen remains sealed and stored. All positive drug test results are reviewed and interpreted by a Medical Review Officer (MRO) under contract with the state, before they are reported to the AGP Safety Manager. If the laboratory reports a positive result to the MRO, the MRO contacts the employee and conducts an interview to determine if there is an alternative medical explanation for the presence of a controlled substance in the specimen. If the employee provides appropriate documentation and the information is verified through the employee's physician the MRO will report the test as negative.
5. The MRO will make three (3) attempts to contact the employee. If the MRO is unsuccessful at contacting the employee, the results will be determined as inconclusive. If the test result of a primary specimen is positive, the employee may request the MRO have the split specimen be tested in a different certified laboratory for the presence of drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within **72 hours** of the employee having been notified of a verified positive test result. Cost of split specimen testing is the responsibility of the employee.

B. Alcohol:

1. Two breath tests are required to determine if a person has a prohibited alcohol concentration, a screening test and confirmation test. Any result from the screening test is considered negative if the alcohol concentration is less than .02. If the alcohol concentration is .02 or greater, a confirmation test must be conducted.
2. The Evidential Breath Testing Device (EBT) shall be conducted by a Breath Alcohol Technician (BAT) employed by a drug/alcohol testing organization under contract with the State of Oregon.

C. Confidentiality of Test Results: Employee alcohol/drug test results and records are maintained under strict confidentiality by the AGP Safety Manager, the drug testing laboratory, the MRO and the alcohol testing facility. Direct supervisors will be informed if the test is returned positive. The results cannot be released to any other party except a SAP without expressed written consent of the employee.

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Exceptions to the confidentiality of the test results are limited to provisions of the public records law and the public employee collective bargaining act as well as decision makers in arbitration, litigation, or administrative proceedings arising from a positive drug or alcohol test and provisions established in 49 CFR parts 382 and 40.

VIII. CONSEQUENCES FOR ENGAGING IN PROHIBITED CONDUCT:

A. Action: Employees who engage in prohibited conduct as described in Section V.E.1. thru V.E.6. of the **Standards** Section of this directive will subject themselves to disciplinary action up to and including dismissal from state service.

1. **Executive Service:** Executive Service employees who engage in prohibited conduct subject themselves to termination.

2. **Management Service Employees:** Management Service employees who engage in prohibited conduct subject themselves to discipline according to Personnel Division rules and federal guidelines in existence at the time of the prohibited conduct.

3. **Represented Employees:** Represented employees who engage in prohibited conduct subject themselves to disciplinary action consistent with federal guidelines and according to the terms and conditions contained in the applicable collective bargaining agreement.

4. **Final Applicants:** Final applicants who engage in prohibited conduct shall no longer be considered for employment.

B. Use of Leave Time: An employee will be granted Department time for reasonable suspicion, post accident, and return to duty testing. This includes time traveled to and from the test site if such travel is required. When the employee has used all of their leave time, they may be placed on leave without pay to participate in a rehabilitation program and for performing follow-up testing.

C. Positive Drug/Alcohol Test Results: An employee who tests positive by reasonable suspicion, post accident or random testing may be subject to disciplinary action up to and including termination.

1. Upon receiving notification from the vendor of an employee testing positive for controlled substance or alcohol use, the appointing authority shall conduct a predisciplinary investigation which will consist of:

a. The assessment of the employee's work history and the circumstances surrounding the drug use;

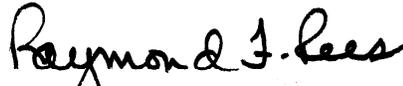
b. The opportunity for the employee to provide information/mitigating circumstances surrounding the use of drugs.

2. As a result of the assessment and the discovery conducted at the predisciplinary investigation, the appointing authority shall decide on the appropriate action(s) to be taken which may include:

a. The signing of a last chance agreement that the employee will stay free from drugs and/or alcohol and will include:

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- (1) Referral to a substance abuse professional for assessment;
 - (2) Referral to the Employee Assistance Program or other certified treatment or rehabilitation program;
 - (3) A plan for verification of successful completion of the treatment or rehabilitation program.
- b. The reassignment of the employee to an alternative job assignment if appropriate.
- c. Appropriate disciplinary action up to and including termination.



RAYMOND F. REES
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The Adjutant General

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DEFINITIONS

- A. **Accident:** Any incident, involving an employee, where someone is injured or property is damaged.
- B. **Adulterate/Alter a Sample:** The intentional consumption of chemicals or any other products that interfere with the drug and/or alcohol testing process or any other intentional act to render a urine sample unfit for testing or alter an alcohol test result.
- C. **Alcohol Test:** A breathalyzer test administered by a BAT to determine the presence of alcohol.
- D. **Breath Alcohol Technician (BAT):** Individuals who instruct and assist individuals in the alcohol testing process and operate an Evidential Breath Testing Device (EBT).
- E. **Commercial Driver's License:** A commercial driver's license is required for any driver who operates a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property, whose gross vehicle combination weight is 26,001 pounds or more, inclusive of a towed unit with a gross vehicle weight rating of 10,000 pounds or more; has a gross vehicle weight rating of 26,001 or more; a vehicle that transports 16 or more passengers including the driver; any vehicle that transports hazardous material as found in the Hazardous Material Transportation Act and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
- F. **Controlled Substances:** The term "drug" and "controlled substances" are used interchangeably in this policy. They refer to one or more of the following controlled substances as identified in schedules I through V of Section 202 of the Controlled Substance Act, 21 USC 811, 812 and CFR 1308.11 through 1308.15 unless authorized by a legal prescription or are exempt from State or Federal Law. The prohibited drugs/controlled substances are: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and all other substances specified in the above identified act.
- G. **Controlled Substance Test:** A urine test performed by a licensed testing facility to determine the presence of controlled substances.
- H. **Conviction:** Found guilty in a court of law for a crime.
- I. **Diluted Specimen:** A urine specimen that has a specific gravity less than 1.003 and a creatinine of less than 20.
- J. **Distribution:** To hand out, giveaway, trade or sell to an individual.
- K. **Employee:** Any full-time, part-time, permanent, limited duration, seasonal, job share, temporary employee or volunteer. Any employee who is required to hold a CDL as a condition of employment.
- L. **Employer:** One who directs the work and has discretionary power over an employee.

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M. **Final Applicant:** Any person who is the final applicant to a position, where a bonafide job offer has been made subject to passing a pre-employment controlled substance test.

N. **Injury:** An injury requiring professional medical attention.

O. **Manufacture:** To make or produce.

P. **Medical Review Officer (MRO):** A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer'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.

Q. **Performing a Safety Sensitive Function:** A driver is considered to be performing a safety sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety sensitive function.

R. **Possession:** To have an item, which an individual is in physical control of or located within an item of personal property or in the property under control by an individual.

S. **Reasonable Suspicion:** Specific, contemporaneous, articulated observations concerning the appearance, behavior, speech, or body odors of an employee. Reasonable suspicion observations may also be based on the known chronic and/or withdrawal effects of controlled substances. ***This observation must be made by either an individual trained to make reasonable suspicion determinations or the opinion of a medical professional employed by the agency.***

T. **Refusal to Test:** Refusal to submit to a controlled substance or alcohol test means that an employee/driver:

1. Fails to provide adequate urine for a controlled substance test without a valid medical explanation after he or she received notice of the requirement for urine testing pursuant to this policy and provisions of a drug-free workplace State Policy 50.000.01.

2. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirements for breath testing pursuant to 49 CFR part 382 and this policy.

3. Engages in any conduct that clearly obstructs the testing process.

4. Fails to remain readily available for any required post accident testing.

U. **Split Specimen:** A urine specimen that is subdivided into containers labeled as primary and split specimen.

V. **Substance Abuse Professional (SAP):** A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism

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and Drug Abuse Counselors Certification Commission or The International Certification Reciprocity Consortium/Alcohol & Other drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance related disorders.

W. Testing Facility: The facility performing drug/alcohol testing will be licensed and operated in accordance with ORS 438.010 and OAR 333-24-0305 through 0350.

X. Under the Influence: Any detectable amount of a controlled substance and/or BAC of .02 (.00 for Firefighters).