



# Carroll County Department of Fire & EMS

<b>Standard Operating Procedure:</b> 2.16	<b>Effective Date:</b> August 1, 2023
<b>Subject:</b> Nicotine, Alcohol, and Controlled Substance Testing	<b>Section:</b> Human Resources
<b>Authorized:</b> <i>Michael Robinson</i> Director/Chief, Fire & EMS <i>Kristy Buckle</i> Director, Human Resources	<b>Revision Date:</b> January 1, 2024

## I. PURPOSE

In accordance with Carroll County Government’s Drug-Free Workplace Policy, the Drug-Free Workplace Act of 1988, and the Department of Fire and EMS (DFEMS) Tobacco/Nicotine Policy, DFEMS is committed to protecting the safety, health, and well-being of all employees and other individuals in our workplace and community. To achieve a safe and healthy work environment, employees must be able to work in a drug-free environment, and themselves be free from the effects of nicotine, alcohol, controlled substances, and other intoxicants.

The County will make available to all employees information concerning the effects of nicotine, alcohol, and controlled substance use, the signs and symptoms of alcohol and controlled substance problems, and methods of intervening when a problem is suspected.

## II. APPLICABILITY

This policy establishes testing and disciplinary procedures for all DFEMS employees who are subject to Chapter 37, Carroll County, Maryland Code of Ordinances, including candidates for employment in one of these positions.

All covered employees are considered to hold safety-sensitive positions; therefore, they are required to participate in pre-employment, post-accident, random, and reasonable suspicion alcohol, controlled substance, and/or nicotine testing.

## III. DEFINITIONS

In this Policy, the following definitions apply except as otherwise expressly provided or a necessary implication requires:

- A. Accident** – an incident involving a departmental vehicle in which there is either a fatality, an injury treated away from the scene, or a vehicle is required to be towed away from the scene.
- B. Adulterated Specimen** – a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine. An adulterated specimen is considered a refusal to test, and subject to the same consequences as a positive test result.
- C. Alcohol** – an intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.
- D. Alcohol Concentration** – is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device (EBT).
- E. Alcohol Use** – the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- F. Certified Laboratory** – a laboratory approved by the Department of Health and Human Services (DHHS) to perform nicotine, drug, and alcohol testing in accordance with Federal guidelines.
- G. Confirmation Test** – means a second alcohol test, following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath that provides quantitative data of alcohol concentration. For controlled substances and/or nicotine, confirmation testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test, and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.
- H. Controlled Substance** – has the meaning given in section 802(6) of Title 21, United States Code (U.S.C.).
- I. Cotinine** – a chemical substance formed by the breakdown of nicotine in the body.
- J. Covered Employee** - all DFEMS employees who are subject to Chapter 37, Carroll County Code of Maryland Ordinances, including candidates for employment in one of these positions.
- K. Diluted Specimen** – a specimen with creatinine and specific gravity values that is lower than expected for human urine.
- L. Departmental Vehicle** – any vehicle which is owned and/or insured by Carroll County Government.
- M. Drug** - a medicine or other substance which has a physiological effect when ingested or otherwise introduced into the body.

- N. Medical Review Officer (MRO)** – a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving and interpreting 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 the employee’s medical history and any other relevant biomedical information.
- O. Nicotine** - An addictive, poisonous chemical found in tobacco and tobacco products.
- P. Positive Test Results** – for a drug test means a verified presence of the identified drug or its metabolite. A positive alcohol test result means a confirmed alcohol concentration of .04 BAC or greater.
- Q. Random Testing** – a manner of selecting individuals for nicotine, drug, and/or alcohol testing from the total population subject to testing, so that each member of the population subject to testing has an equal chance to be selected on each occasion random testing is undertaken.
- R. Reasonable Suspicion** - belief that an employee has violated the alcohol, and/or controlled substances prohibitions, based upon specific, contemporaneous, articulable observations concerning appearance, behavior, speed or body odors of the employee.
- S. Safety-Sensitive Positions** – positions identified as having a substantially significant degree of responsibility for the safety of others, where there is a potential that impaired performance of the employee could result in death of or injury to the employee or others.
- T. Screening test (initial test)-**
1. For alcohol testing - a procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.
  2. For controlled substance testing - an immunoassay screen to eliminate "negative" urine specimens from further consideration.
  3. For nicotine/cotinine testing - an immunoassay screen to eliminate "negative" urine specimens from further consideration.
- U. Split Sample** - the tests for controlled substances follow split sample procedures. Under these procedures, an employee who has a positive test can have the second portion of the initial urine sample tested at another laboratory if the MRO is notified by the employee.
- V. Substance Abuse** – the use of illegal drugs or the use of prescription or over-the-counter drugs or alcohol for purposes other than those for which they are meant to be used, or in excessive amounts.
- W. Substance Abuse Professional (SAP)** - a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical

experience in the diagnosis and treatment of alcohol and controlled substances related disorders.

**X. Test Collection Site** - the fixed or mobile facility selected to perform nicotine, alcohol and/or controlled substances test in full compliance with the Federal regulations.

**Y. Tobacco Products**- any product that can introduce nicotine into the human body. This includes but is not limited to cigarettes, electronic cigarettes, cigars, pouch tobacco, dip, snuff, chew, vaping products, nicotine products such as gum, patches, smokeless or spit tobacco. If not covered within, any product that contains tobacco or nicotine is prohibited.

**Z. Verified Negative Test** - a drug test result reviewed by a MRO and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

**AA. Verified Positive Test** - a drug test result reviewed by a MRO and determined to have evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

#### **IV. POLICY ADMINISTRATION**

The Director/Fire Chief and the Assistant Chief – Training, Health and Safety in conjunction with the Department of Human Resources is responsible for the adherence to and implementation, enforcement, and monitoring of this Policy.

**A. The Carroll County Department of Human Resources shall be responsible for the following:**

1. Training all covered employees involved in the implementation of this Policy. Such training shall include instruction on the conditions for testing for substances, confidentiality requirements, the impact of positive test results and the appeal rights of covered employees.
2. Informing covered employees of the consequences of a positive test result.
3. Informing covered employees that they will be subject to the same consequences of a positive test if he/she refuses the screening or test, adulterates, or dilutes the specimen, substitutes the specimen with that of another person, sends an imposter, refuses to sign the required forms, or refuses to cooperate in the testing process in such a way that prevents completion of the screening or test.
4. Maintenance of test results. Test results shall be forwarded by the independent laboratory to the Department of Human Resources where the results will be maintained in a confidential manner.
5. Notice of test results. The Department of Human Resources will advise the employee or candidate for employment being tested and the Director/Chief Fire & EMS of any positive test results in accordance with Maryland law and shall provide the individual with a copy of his/or her test results. The Department of Human Resources shall also, in the case of a positive test result, advise the tested employee, in accordance with Maryland

law, of his/her right to request independent testing of the same sample taken from the employee for verification of the presence of any prohibited substance by a laboratory certified and licensed in accordance with the laws of the State of Maryland, and of the time period within which he/she must exercise such right.

**B. The Director/Fire Chief and the Assistant Chief – Training, Health and Safety may be responsible for the following:**

1. Sending notification of the date and time for random screening examinations to covered employees which notification of scheduling may be directed through the covered employee's supervisor or other commanding officer.
2. Coordination of drug and alcohol screening where a reasonable suspicion of alcohol and/or substance abuse exists.
3. Development of contractual agreements with a collection center and a substance screening laboratory for the purpose of implementing this policy.

**C. Employees shall:**

1. Upon notification from their supervisor or other commanding officer, report for testing at such time and place set forth in the notification.
2. Present their Departmental identification card to personnel at the collection center designated by the County.
3. Complete all forms and provide all medical information related to the screening examination requested by personnel at the collection center designated by the County.
4. Immediately report to their supervisor or other commanding officer any accidental exposure to any drug as defined by this Policy.
5. Immediately seek medical treatment when exposed to any drug as defined by this Policy.
6. Notify their supervisor or other commanding officer in writing when they are taking prescription or non-prescription medications which may have effects on performance and behavior and identify the type of medication being taken as well as the effects which the medication may have on performance and behavior.

**V. PROHIBITED BEHAVIOR**

It is prohibited to possess, manufacture, distribute, dispense, and/or use nicotine, controlled substances, alcohol, or other intoxicants in the workplace, on County property, and/or while conducting County business away from the workplace.

Use of nicotine, tobacco products, cannabis (including recreation and medical), and illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body.

All employees are prohibited from performing or continuing to perform safety-sensitive functions or operating County equipment and/or vehicles while consuming alcohol or while having an alcohol concentration of .02 or greater. An employee whose alcohol test results are .02 or greater may not perform safety-sensitive functions until the next regularly scheduled duty period, but in no event less than 24 hours after the test.

If an employee has registered or been scheduled for a pre-assigned call back, employees shall not consume any substance that would impair him or her from performing his or her duties.

If an employee has consumed alcohol and is contacted for an unscheduled callback, they must acknowledge the use of alcohol at the time they are called to report for duty.

All employees are prohibited from consuming alcohol within eight (8) hours prior to coming on duty.

All employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident, or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

An employee who is convicted of any criminal drug statute shall notify Department of Human Resources and Risk Management in writing no later than five (5) calendar days after such a conviction.

## **VI. TESTING PROCEDURES AND REQUIREMENTS**

All testing will be performed by a certified laboratory and/or health-care provider certified in accordance with Federal guidelines. Employee privacy will be maintained to the maximum extent practicable as required by Federal law.

Substances that will be tested for may include but are not limited to: Marijuana, Cocaine, Opioids, Opiates, Amphetamine/Methamphetamine, Phencyclidine, Barbiturates, Benzodiazepines, Propoxyphene, Methadone, Methaqualone, Alcohol, and/or Nicotine.

Alcohol testing shall be performed by an approved "evidential breath testing" device (also known as "EBT"). Testing for controlled substances and/or nicotine shall be done by urinalysis. Specimen bottles shall be clean, tamper-proof, and numbered with an identifying number identical to that on the chain of custody form.

A federally approved "chain of custody" form shall be used to account for the integrity of each urine specimen by tracking its handling and storage from the point of specimen collection to its final disposition.

The collection site person shall be responsible for maintaining the integrity of the specimen collection and transfer process, for carefully ensuring the modesty and privacy of the donor and for avoiding any conduct or remarks that are inappropriate or offensive.

All positive tests for controlled substances, alcohol, and/or nicotine shall be subjected to a confirmatory test. In addition, the employee may request split sample testing, as described later in this document, for positive tests.

### **A. Pre-employment Testing**

Before being hired, promoted, or transferred into a DFEMS position, individuals must successfully pass a pre-employment alcohol and controlled substances test.

Pre-employment testing applies to both candidates for employment and current employees who are in the process of being promoted to or transferred into a position in DFEMS that is covered by this policy.

Testing will be administered after the candidate or employee has received a conditional offer of employment, but prior to a final offer of employment.

Test results must indicate an alcohol concentration less than 0.04 and a verified negative result for controlled substances testing to be considered passing.

Alcohol and controlled substance tests performed by employers other than Carroll County are not acceptable substitutions for testing performed through Carroll County testing program.

## **B. Post-Accident Testing**

Any employee involved in an accident (as defined by this policy) while on duty, on County property, or while conducting County business is required to complete post-accident drug and alcohol testing.

As soon as practicable following an accident, the employee shall be taken by the supervisor to the testing site to be tested for alcohol and controlled substances. (Note: an employee required to go to the test collection site after an accident shall not drive to the test collection site.)

The Department of Human Resources, in coordination with the Assistant Chief – Training, Health and Safety, shall retain documentation of the reasons for post-accident testing.

### **1. Employee Post-Accident Actions:**

An employee who is subject to post-accident testing shall remain available for such testing and shall not use alcohol within 8 hours following the accident or until he or she undergoes the alcohol test, whichever comes first.

If an employee fails to remain available for testing, he or she will be deemed to have refused to submit to testing which will incur the same consequences of a positive test.

Following an accident, the driver is required to remain at the accident scene and call for the police to come to the scene. The driver may leave the scene of an accident if the driver:

1. Required emergency medical care; or
2. Obtained assistance in responding to the accident.

Following any accident which occurred while the employee was operating a Departmental Vehicle, the driver is required:

1. To have his or her supervisor report to the scene. If the supervisor is unavailable, another departmental supervisor will respond to the scene.
2. To notify the Office of Risk Management

Nothing in this section shall preclude an ill or injured employee from receiving essential medical attention. In such cases, the supervisor or the Assistant Chief – Training, Health and Safety shall apprise the medical personnel in attendance of this Policy and request that the appropriate testing be done without delay, if feasible.

Nothing in this section shall preclude examination, breath or blood alcohol testing, or controlled substance testing of the employee by on-site police or public safety offices under separate authority if required by law.

### **C. Random Testing**

Random controlled substance, alcohol, and nicotine tests shall be unannounced and unpredictable, and the dates for administering random tests are to be spread reasonably throughout the calendar year. Random testing may be conducted at all times of the day.

#### **1. Selection Procedures:**

A third-party computer program shall be used to periodically generate random selection of employees.

The selection method will be a scientifically valid method of selection to ensure that all covered employees have an equal chance of being tested each time selections are made.

The Assistant Chief – Training, Health and Safety or the Department of Human Resources may, on the test day(s), contact the supervisor of the randomly selected employee.

An employee selected for random testing shall be notified on the same day when the test is to occur.

In the event an employee, who is selected for a random controlled substances test, alcohol test, and/or nicotine test is out on extended leave, an alternate selection will be made and noted.

#### **2. Employer Testing Procedures:**

The employee must report to the test collection site immediately once notified.

The employee shall be paid or receive overtime or compensatory time in accordance with Chapter 37, Carroll County, Maryland Code of Ordinances, for time expended in a random test outside of regular working hours. Time expended begins when he or she leaves for the test and ends when he or she leaves the test site.

Statistical records of the random selections of employees will be maintained by the Department of Human Resources.

### **D. Reasonable Suspicion Testing**

An employee shall be subject to alcohol and/or controlled substance testing when there is reasonable suspicion to believe the employee is impaired. The conditions that may result in



reasonable suspicion testing include but are not limited to:

- smell of alcohol or controlled substance;
- unusual lack of coordination;
- unexplained hyperactivity, depression, or withdrawal;
- unexplained inability to think, reason, or perform job functions; or
- indications of the chronic or withdrawal effects of alcohol or controlled substances.

A reasonable suspicion determination shall only be made by a supervisor who has completed training on the symptoms of alcohol or controlled substances abuse. Whenever possible, a supervisor's reasonable suspicion should be confirmed by a second supervisor before requiring an employee to undergo alcohol and/or controlled substances testing.

The reasons justifying the testing shall be prepared and signed by the supervisor making the reasonable suspicion determination. Within 24 hours of the observed behavior, a copy shall be promptly forwarded to Human Resources and the Assistant Chief – Training, Health and Safety.

Upon determination of reasonable suspicion, the supervisor or other designee must transport the employee to the testing facility. While awaiting test results, the supervisor will return the employee back to the worksite or will arrange to take the employee home. Under no circumstances will the employee be permitted to return to duty or operate any vehicle or equipment (including personal vehicles and equipment) pending results of the test. An employee awaiting test results will be placed on administrative leave for the remainder of their shift or until results are received.

## **E. Time Constraints for Post-Accident and Reasonable Suspicion**

### **1. Alcohol:**

An alcohol test following an accident (post-accident) or observation (reasonable suspicion) shall be administered whenever possible within two (2) hours, and in no event in more than eight (8) hours following the determination.

If the required alcohol test is not administered within two (2) hours following the accident (post-accident) or observations (reasonable suspicion), the supervisor must submit a report to Human Resources explaining why the test was not promptly administered.

If the test cannot be administered within eight (8) hours following an accident (or observation), attempts to administer must cease. The Assistant Chief – Training, Health and Safety in coordination with Human Resources must document and explain the events that resulted in the failure to administer the test.

### **2. Controlled Substances:**

If a required controlled substances test is not administered within 32 hours following an accident or an observation, the County must cease attempts to administer the test and maintain a record of the reason(s) why the test was not administered within the required timeframe.

## **VII. DISCIPLINARY ACTION**

Violation of this policy and procedures may result in disciplinary action up to and including termination. In such cases, the employee will be provided with an opportunity to provide justification for his or her actions. Nothing in this policy shall prohibit dismissal of or other disciplinary action against an employee pursuant to any other policy, regulation, ordinance, or law.

Any employee who loses (temporarily or permanently) certifications required to perform the essential functions of their job may be subject to disciplinary action, up to and including termination.

Any employee testing positive for alcohol and/or controlled substance will be immediately removed from duty for a period of 30 days, suspended without pay for regularly scheduled shifts within those 30 days, referred to the Employee Assistance Program for assessment and recommendations, required to successfully complete the recommended rehabilitation including continuing care, required to pass a Return to Duty Test (blood, breath, urine), sign a Return to Work Agreement, and be subject to ongoing, unannounced, follow-up testing for a period of five (5) years. The employee shall be terminated immediately if he/she tests positive a second time or violates the Return-to-Work Agreement.

Any employee testing positive for nicotine will be immediately removed from duty and suspended without pay for the remainder of their shift and their next regularly scheduled shift. Employee will also be referred to a Tobacco Cessation Program for treatment, sign a Return-to-Work Agreement, and be subject to ongoing, unannounced, follow-up testing for a period of five (5) years. The employee shall be terminated immediately if he or she tests positive a second time or violates the Return-to-Work Agreement.

An Employee will be subject to the same consequences of a positive test if he or she refuses the screening or test, adulterates, or dilutes the specimen, substitutes the specimen with that of another person, sends an imposter, refuses to sign the required forms, or refuses to cooperate in the testing process in such a way that prevents completion of the screening or test.

### **VIII. PROCEDURES FOR A VERIFIED POSITIVE TEST RESULT**

The MRO shall notify an employee who has a verified positive test that the employee has 72 hours in which to request testing of the split specimen. The employee shall have 72 hours following notification of a positive result to make a request to the MRO for testing of the split specimen.

The MRO shall direct, in writing, the laboratory to provide the split specimen to another certified laboratory for analysis.

If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the employer and the employee.

If an employee has not contacted the MRO within 72 hours, as provided in this section, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other

circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the analysis of the split specimen be performed.

The County will be responsible for the split specimen testing cost only if the analysis of the split specimen fails to confirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen or if the preceding paragraph.

## **IX. PROCEDURES FOR RETURN TO DUTY**

### **A. Return-to-Duty Testing:**

Employees who have violated any alcohol or controlled substance rules must undergo Return-to-Duty Testing before being allowed to return to duty.

Before an employee who has violated any of the alcohol and/or controlled substances rules returns to duty, he or she must be evaluated and undergo:

1. An alcohol test with a result indicating an alcohol concentration of 0.00, if the violation concerned alcohol; or,
2. A controlled substances test resulting in a negative test if the violation was of the rules concerning controlled substances.

### **B. Evaluation and Treatment:**

An employee who engages in prohibited conduct will be evaluated by a Substance Abuse Professional (SAP) approved by the County to determine what assistance the employee needs to resolve problems associated with alcohol and controlled substances. Evaluation, any consequent rehabilitation, and testing will be paid in accordance with EAP and/or group health contracts provided to County employees. The SAP will determine if the employee has followed the prescribed rehabilitation program and will determine the follow-up testing after the employee's return to duty.

### **C. Follow-up Testing and Return-to-Work Agreement:**

Under no circumstances may an employee who has engaged in prohibited conduct return to duty with the County until the employee has signed a return-to-work agreement that shall include follow-up testing.

Any covered employee who re-enters the work force after failing a drug and/or alcohol test and following successful substance abuse treatment must agree to a return-to-work agreement. The contract may include, but is not limited to, the following:

1. A statement of expected work-related behaviors.
2. An agreement to periodic random testing for a specified period of time, as outlined in the re-entry contract document.
3. An agreement to follow specified after-care requirements.
4. A release to work statement from an approved treatment specialist and from the MRO

#### **D. Employee Assistance:**

Any employee who believes he or she has a drug and/or alcohol problem is encouraged to immediately seek assistance.

The County offers EAP for employees. Employees can contact EAP directly for counseling and information regarding available drug/alcohol treatment and rehabilitation programs at any time. Services are available 24 hours a day.

Employees can also contact the County's Human Resources Department for assistance regarding treatment programs.

#### **X. SEVERABILITY AND MODIFICATIONS**

Should any section, subsection or provision of this policy/procedures be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this policy as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

Carroll County reserves the right to modify all or part of these procedures as may become necessary in its discretion.

#### **XI. RECISION**

This Standard Operating Procedure rescinds all directives regarding Nicotine, Alcohol, and Controlled Substance Testing or similar content previously issued for personnel of the Carroll County Department of Fire & EMS.