

Substance Abuse Manual

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Chapter 1 – Introduction

§ 1 – Overview

Purpose of the Program

The purpose of the Substance Abuse Program is to reflect the department’s commitment to achieving an alcohol- and drug-free workplace. An alcohol- and drug-free workplace helps protect the health and safety of the department’s most valuable resource, its employees, as well as the health and safety of the public. In addition, the department is committed to rehabilitating and restoring employees whose performance may be impaired by alcohol or drug abuse. The department provides an Employee Assistance Program (EAP) and encourages employees and their immediate family members to use the EAP voluntarily for drug and alcohol related problems.

Types of Employees

All Department Employees refers to any person who is employed by the department in a full-time, part-time, temporary, project, or seasonal position, including temporary recruitment employees, but not including other temporary employees under contract to the department.

Employees Who Drive for the Department are employees who are authorized to drive for the department, which includes employees who drive their personal vehicles to meetings, conferences, training, etc., regardless of ownership of the vehicle or equipment and the frequency of driving or operating duties.

Commercial Drivers are employees who have commercial driver licenses and drive commercial motor vehicles, regardless of the frequency, for the department.

Safety-Impact Employees are employees who perform safety-impact activities. Safety-impact activities include driving vehicles in and around traffic, that are not commercial motor vehicles, in a fashion not usual to normal traffic; activities such as flagging; activities that involve dangerous chemicals; operating large heavy equipment, aircraft or swing bridges; conducting or assisting with underwater bridge inspections; and rail safety inspections, investigate railroad accidents or complaints. (See Form [2237](#), Safety-Impact Activities Certification, for a complete list of activities.)

Vessel Crewmembers are employees who work on the ferry vessels in Galveston or Port Aransas or are under the authority of a mariner’s license, certificate of registry, or merchant mariner’s document.

Drug and Alcohol Testing Forms

When deciding which forms to use for all employees, commercial drivers, safety-impact employees, and crewmembers, use the following guidelines:

Testing Forms				
Type of Employee	Type of Test	Job Analysis and Physical Exam Record Form	“Authorization for Physical Urine Drug Screen and Breath Alcohol Test” Form	Custody and Control Form
Commercial Drivers	<ul style="list-style-type: none"> • Pre-Employment • Reasonable Cause • Return-To-Duty • Follow-Up • Post-Accident • Random 	484	2007	#10481856 “ “ “ “ “
Note: Port Aransas Crewmembers—use Form #60052509.				
Safety-Impact Employees	<ul style="list-style-type: none"> • Pre-Employment • Reasonable Cause • Post-Accident • Return-To-Duty • Follow-Up • Random 	484	2007	#10481862 “ “ “ “ “
All Department Employees	<ul style="list-style-type: none"> • Pre-Employment • Reasonable Cause • Return-To-Duty • Follow-Up 	484	2007	#10481862 “ “ “
Vessel Crewmembers: Port Aransas	<ul style="list-style-type: none"> • Pre-Employment • Reasonable Cause • Post-Accident • Return-to-Duty • Follow-Up • Random 	484	2007	#60052509 “ “ “ “ “
Vessel Crewmembers: Galveston	<ul style="list-style-type: none"> • Pre-Employment • Reasonable Cause • Post-Accident • Return-to-Duty • Follow-Up • Random 	484	2007	#10481856 “ “ “ “ “

Appeals

Any employee who is directly affected by an adverse personnel action of involuntary demotion, suspension without pay, or termination under the Substance Abuse Program Rules may challenge that action through the department’s appeals process as described in Chapter 8, [Conduct and Problem Resolution](#), of the *Human Resources Policy Manual*.

§ 2 – Responsibilities

Employees

Department employees are responsible for complying with the policies and prohibitions of the [Substance Abuse Program Rules](#). Department employees have an obligation to project a positive image at all times to other employees and the public in order to uphold the public's trust in the department. An employee who violates the policies and prohibitions of this program will be subject to consistently applied discipline, up to and including termination from the department. In addition to or in lieu of disciplinary action, an employee will be mandatorily referred to the Employee Assistance Program (EAP) and required to complete treatment.

Supervisors

Department supervisors are responsible for complying with the policies and procedures outlined in the Substance Abuse Program Rules and in this manual. Department supervisors are also responsible for ensuring that the policies and procedures of the Substance Abuse Program are followed in their work units. A supervisor who has actual knowledge that an employee has violated any of the prohibitions will not allow the employee to remain on duty. Supervisors who allow employees to remain on duty may be subject to disciplinary action, up to and including termination.

Substance Control Officers (SCOs)

Substance Control Officers (SCOs) are responsible for administering the policies and procedures of the Substance Abuse Program at the District/Division and administration level. SCOs also conduct training; provide on-going guidance and assistance to supervisors and employees on the policies and procedures of the program; implement drug and alcohol testing; and ensure that training and documentation requirements are met. See the [SCO Roster](#) for a list of the department's primary and alternate SCOs.

Substance Abuse Program Staff of HRD

Substance Abuse Program Staff members are responsible for developing program rules, policies and procedures; providing technical assistance to Substance Control Officers (SCOs) or other department personnel in the interpretation and implementation of program policies and procedures; providing training for SCOs; ensuring program compliance; and any other assistance as needed. See the [Substance Abuse Program Contact List](#) for names and numbers of the Substance Abuse Program Staff of HRD.

§ 3 – Test Procedures

General Procedures

A person to be tested shall report to the test site designated by the department and follow the directions of testing officials.

Alcohol and drug testing conducted under this title will comply with the procedures set forth in 49 CFR, Part 40.

Costs

Alcohol and drug tests will be conducted at department expense with the exception of a test of the split specimen. The final applicant or employee will be responsible to pay for the test. A test of the split specimen is testing a part of the primary specimen provided at the original collection. The test of the split specimen will be processed separately from the first test.

Retest

If a drug test has a negative dilute result, the employee will be directed to take another test immediately.

Chapter 2 – All Department Employees

§ 1 – Introduction

Overview

The Texas Department of Transportation originally issued the Substance Abuse Program Rules in 1989. The current rules were effective in January 2009 and published in [Title 43, Texas Administrative Code, §§4.30 – 4.46](#).

The policies, procedures, and information found in this chapter apply to all employees who work for the department including temporary recruitment employees. This does not include temporary employees who are under contract to the department. Employees who drive for the department, commercial drivers, employees in safety-impact positions, and vessel crewmembers are subject to additional prohibitions and requirements. The policies and procedures, which apply to those employees, are found in later chapters of this manual.

Definitions

For purposes of administering the Substance Abuse Program Rules, a **supervisor** is any employee who has formal supervisory or managerial responsibilities, who is designated to coordinate the work of other employees, or who is designated to direct a team of employees. Therefore, project leaders and lead workers may assist the supervisor in substance abuse determinations; however, the supervisor makes the final determination.

Critical duties include driving, commercial driving, performing safety-impact activities, performing vessel crewmember duties, operating motorized equipment, supervising or assisting with the loading or unloading of a motor vehicle, and inspecting, servicing, or maintaining any vehicle.

Types of Testing

All employees are subject to **Reasonable Cause Drug and/or Alcohol Testing**. See the [Reasonable Cause Testing](#) section of this chapter for approval requirements and reasonable cause testing procedures.

Training

The department will conduct an alcohol and drug-free awareness program which will provide all employees with initial mandatory training and periodic training as needed regarding the department's Substance Abuse Program Rules, the personnel actions that will be taken for violations of the policy, the specifics of the program, the dangers of alcohol, inhalant and drug abuse in the workplace, and the Employee Assistance Program (EAP).

§ 2 – Prohibited Conduct & Administrative/Disciplinary Actions

Overview

The department prohibits all employees from engaging in any of the policy violations described in this section. As a condition of employment, new employees must signify their awareness of the department's substance abuse policy by signing Form [1833](#), "Employee Information."

Direct Observation

If an employee is directly observed while on duty, including when operating or riding in a state vehicle:

- ◆ possessing an open container of an alcoholic beverage,
- ◆ consuming an alcoholic beverage,
- ◆ illegally possessing or using an illegal drug, or
- ◆ inappropriately using an inhalant,

Then they will be removed from critical duties and given an opportunity to offer a reasonable explanation for the observed circumstances and behaviors.

IF the employee's response indicates that they have violated the policies and prohibitions of this section, or the employee refuses to explain his or her actions, or the employee's response is insufficient or not acceptable.

THEN the supervisor and the SCO will:

- ◆ immediately remove the employee from his or her work duties;
- ◆ mandatorily refer the employee to the EAP;
- ◆ reassign the employee to non-driving duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided; and
- ◆ require the employee to complete whatever treatment recommendations the EAP makes, including aftercare, or be terminated.

Additional Prohibited Activity

If an employee uses alcohol with eight hours following an on-the-job accident or prior to undergoing a reasonable cause alcohol test.

THEN the supervisor and the SCO will:

- ◆ immediately remove the employee from his or her work duties;
- ◆ mandatorily refer the employee to the EAP;
- ◆ reassign the employee to non-driving duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided; and
- ◆ require the employee to complete whatever treatment recommendations the EAP makes, including aftercare, or be terminated.

Working Under the Influence

If an employee is **suspected of working under the influence of drugs or alcohol**, due to a reasonable belief by a supervisor or SCO, which is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance of the employee, while on duty including when operating or riding in a state vehicle, the supervisor and the SCO will:

- ◆ immediately remove the employee from work duties for 24 hours and require him or her to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted;
- ◆ take the employee for a reasonable cause test if there is enough evidence and documentation **AT THAT SPECIFIC TIME** to support reasonable cause testing;
- ◆ continue the removal of the employee from any driving duties **UNTIL**:
 - a negative drug test result is reported by the MRO or
 - an alcohol test result less than 0.02 is reported;
- ◆ mandatorily refer the employee to the EAP if a positive drug test or alcohol test result of 0.04 or greater is reported;
- ◆ reassign the employee to non-driving duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests, if prescribed;
- ◆ require the employee to complete whatever treatment recommendations the EAP Counselors/Substance Abuse Professional (SAP) makes, including aftercare, or be terminated.

Evidence to support reasonable cause testing is based on observed and documented physical, behavioral, or performance indicators of probable use. Supervisors must complete Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” Form [2551](#), “Indicators of Serious Accident or Injury,” Form [2470](#), “Indicators of Work Performance Problems,” Form [2467](#), “Reasonable Cause Determination Checklist,” AND have the approval from all required parties before taking an employee for a reasonable cause test. See the [Reasonable Cause Testing](#) section for more information.

OR

IF reasonable cause testing is not possible, after approval from all required parties, due to extenuating circumstances (i.e., closed collection site, testing equipment problems or other unforeseen reasons),

THEN the supervisor and the SCO will:

- ◆ immediately remove the employee from work duties for 24 hours and require him or her to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted;
- ◆ mandatorily refer the employee to the EAP when 24 hours have passed;

- ◆ reassign the employee to non-driving duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests, if prescribed;
- ◆ require the employee to complete whatever treatment recommendations the EAP Counselors/SAP, including aftercare, or be terminated.

OR

IF there is NOT enough evidence and documentation at the time to support reasonable cause testing and the employee denies working under the influence of drugs or alcohol, or refuses to explain his or her actions,

THEN the supervisor or SCO will take no further action, but will advise the employee that if it is subsequently discovered that they are working under the influence, they will be subject to administrative/disciplinary action.

Note: If there is any reason to believe that the employee is a safety risk to themselves or others, the supervisor should not allow the employee to drive for the department or perform any critical duties.

Positive Test

If an employee tests **positive on a drug test or has an alcohol test result of 0.04 or greater**, the supervisor and the SCO will:

- ◆ immediately remove the employee from driving duties;
- ◆ remove the employee from duties for 24 hours after positive alcohol test;
- ◆ mandatorily refer the employee to the EAP according to the procedures in the [Mandatory Referrals](#) section of this chapter;
- ◆ reassign the employee to non-driving duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests, if prescribed; and
- ◆ require the employee to complete whatever treatment recommendations the EAP makes, including aftercare, or be terminated.

Note: If an employee has an alcohol test result of 0.02 or greater, but less than 0.04, then refer to the [Alcohol and Drug Tests](#) section of this chapter.

An employee will be terminated from the department if the employee refuses to test or has a positive drug test result or an alcohol test result of 0.04 or greater and is still in their initial probationary period or is a project or temporary employee.

Refusal to Test

If an employee refuses to take a reasonable cause drug or alcohol test **by:**

- ◆ failing to appear for any test within a reasonable time;
- ◆ explicitly declines to take a required test, whether a first test or subsequent test;
- ◆ failing to remain at the testing site until the testing process is complete;
- ◆ failing to attempt to provide a urine/breath specimen for any test required;
- ◆ failing to permit a directly observed or monitored collection in a drug test;
- ◆ failing to provide a sufficient urine/breath specimen, and the physician has determined, through a required medical evaluation, that there was not adequate medical explanation for the failure;
- ◆ failing to undergo a medical examination or evaluation as directed by the employer;
- ◆ failing to sign Step 2 of the Breath Testing Form certification;
- ◆ failing to cooperate with any part of the testing process, including refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, failing to wash hands after being directed to do so by the collector, or any other uncooperative behavior;
- ◆ failing to follow the observer’s instructions to raise clothing above the waist, lowering clothing and underpants, or turning around to permit the observer to determine if the employee has any type of prosthetic or other device that could be used to interfere with the collection process for an observed collection;
- ◆ possessing or wearing a prosthetic or other device that could be used to interfere with the collection process;
- ◆ admitting to the collector or medical review officer that the employee adulterated or substituted the specimen; or
- ◆ if the MRO reports a verified adulterated/substituted test result;

Then the SCO and supervisor will:

- ◆ be notified immediately;
- ◆ ask the collection site personnel to leave the room; and
- ◆ talk to the employee reminding him or her that a refusal to take any drug or alcohol test will result in an immediate termination.

Unable to Perform Duties Safely

If an employee is **unable to perform work duties in a safe manner due to the use of prescription drugs or over-the-counter substances** while on duty, including when operating or riding in a state vehicle, the supervisor and the SCO will reassign the employee to non-driving duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted.

Note: Employees are not prohibited from using their own legally prescribed drugs or over-the-counter medications if their performance is not impaired.

Admitting to a Drug /Alcohol Problem or Use in the Workplace

If an employee, other than a commercial driver, safety-impact employee, or vessel crewmember, **voluntarily admits to having an alcohol, inhalant, or drug abuse problem**, or use in the workplace, the supervisor and the SCO will:

- ◆ immediately remove the employee from driving duties;
- ◆ mandatorily refer the employee to the EAP;
- ◆ reassign the employee to non-driving duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided; and
- ◆ require the employee to complete whatever treatment recommendations the EAP Counselors/SAP makes, including aftercare, or be terminated.

Note: Disciplinary action will not be taken against an employee who voluntarily admits to having a problem with alcohol, inhalant, or drug abuse, provided the admission occurs prior to a determination that the employee should be tested or mandatorily referred. Employees cannot admit to having an alcohol, inhalant, or drug abuse problem in order to avoid testing.

Suspicious Substance Found

If a **substance which appears to be an illegal drug is found** within an area under the effective control of an employee, the supervisor and the SCO will contact the Substance Abuse Program Staff of HRD at the earliest possible time, before turning the matter over to law enforcement authorities.

Suspected of Selling Drugs

This prohibition includes any violation of state and federal criminal drug statutes of controlled substances.

If an employee is **reasonably suspected of selling, distributing, transporting, or manufacturing illegal drugs, or conspiring to sell, distribute, transport, or manufacture illegal drugs** due to direct observation of such acts in the workplace or by other reason such as an indictment, arrest, charge, or conviction of selling, distributing, transporting, or manufacturing illegal drugs inside or outside the workplace, the following procedures shall be followed:

- ◆ the employee shall report the arrest, charge, indictment or conviction directly to his or her supervisor or SCO within one day upon return to work after its occurrence or they will be suspended for three days without pay;
- ◆ the supervisor will place the employee on administrative leave, pending investigation;
- ◆ the employee will be provided a letter in person or by regular and certified mail which:
 - summarizes the reasons for these actions;
 - notifies the employee that violation of the above prohibition subjects the employee to termination from the department; and
 - advises the employee of a specified time period to provide a reasonable explanation, and advises the employee that if his or her response indicates that he or she violated the above policy, or if it is insufficient or not acceptable, or if an investigation by law enforcement, the department, or other authorities confirms the suspicion, the employee will be terminated from the department.
- ◆ the employee will be terminated from the department if:
 - he or she fails to respond within the specified time frame; or
 - the response is unacceptable; or
 - the investigation by law enforcement, the department or other authorities confirms the suspicion that the employee was selling, distributing, transporting, or manufacturing illegal drugs.

OR

IF an employee was USING ILLEGAL DRUGS AND NOT SELLING, distributing, transporting, or manufacturing illegal drugs, or conspiring to sell, distribute, transport, or manufacture illegal drugs, **INSIDE THE WORKPLACE**, while on duty including when operating or riding in a state vehicle,

THEN the supervisor and the SCO will:

- ◆ immediately remove the employee from driving duties;
- ◆ mandatorily refer the employee to the EAP;
- ◆ reassign the employee to non-driving duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided; and

- ◆ require the employee to complete whatever treatment recommendations the EAP Counselors/SAP makes, including aftercare, or be terminated.

OR

IF an employee was USING ILLEGAL DRUGS AND NOT SELLING, distributing, transporting, or manufacturing illegal drugs, or conspiring to sell, distribute, transport, or manufacture illegal drugs, OUTSIDE THE WORKPLACE,

THEN the supervisor and the SCO will ensure that the employee is made aware of the EAP.

§ 3 – Mandatory Referrals

Overview

The procedures outlined in this section will be followed for employees who engage in actions prohibited by the department that require removal from driving duties and a mandatory referral to the EAP.

Mandatory Referral Procedures

The Referral

The process through which the SCO or supervisor explains to the employee the mandatory referral process and requirements to complete treatment.

The Referral	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Meet with the employee and give him or her a copy of the Form 2474, Mandatory Referral Letter. • Advise the employee that: <ul style="list-style-type: none"> • they are being mandatorily referred to the EAP and the reason for the referral • they must comply with the mandatory referral process and any treatment requirements made by the EAP Counselors/SAP or any other treatment provider, including aftercare • mandatory referral process includes the referral, initial evaluation, treatment, follow-up evaluation, return-to-duty test, return-to-work form, aftercare, and follow-up testing, if prescribed • information regarding his or her referral will be kept confidential – personnel with information on the referral are supervisor, DE/DD/Administration, SCO, Substance Abuse Program Staff of HRD, EAP Case Manager, EAP Counselors/SAP, and the EAP Aftercare Team • they may be subject to return-to-duty and follow-up testing, and • failure to comply with any stage of the referral will result in termination. • Ask the employee if they have any questions. • Have the employee sign the Mandatory Referral Letter and give him or her a copy.
SCO	<ul style="list-style-type: none"> • Call 1-866-34TXDOT (866-348-9368). Inform the counselor that you are making a TxDOT mandatory referral and provide the employee’s name and social security number (SSN), the type of employee, the reason for the referral, and any other information requested by the counselor. <p>Caution: Employees shall not make the initial call to arrange their first appointment when they are being mandatorily referred. This process must be initiated by the SCO or the EAP will treat the referral as a self-referral.</p> <ul style="list-style-type: none"> • Have the employee talk to the EAP Counselors in private. Initial appointments will be available within three workdays of this contact. • Fax a copy of the Mandatory Referral Letter and the employee’s job profile to the EAP at (512) 328-3437 and fax or scan to the Substance Abuse Program Staff of HRD at (512) 486-5325 or HRD_RA-FAX-5124865325@txdot.gov as soon as possible after the referral call is made within 24 hours.

Initial Treatment

The EAP Counselors/SAP makes the initial assessment of treatment requirements that the employee must complete in order to return to work.

Initial Treatment	
Who	Action
EAP Counselors/SAP	<ul style="list-style-type: none"> • Meet with the employee and evaluate him or her to determine what assistance is needed by the employee to resolve problems associated with alcohol or drug use and make treatment requirements. • Refer the employee to a treatment provider that best meets the needs of the employee in a cost-effective manner. Whenever possible, the EAP Counselors/SAP will refer the employee to a treatment provider that is covered by his or her insurance. • Provide the SAP letter following the initial evaluation to the Substance Abuse Program Staff of HRD.
Employee	<ul style="list-style-type: none"> • Continue to complete treatment requirements from the EAP Counselors/SAP. During initial care the employee will maintain contact with the EAP Counselors/SAPs, the SCO and the EAP Case Manager. • Provide information to the EAP Counselors/SAP when they have completed the treatment requirements.
EAP Case Manager	<ul style="list-style-type: none"> • Provide information about the employee’s ability to work while in treatment, time off work needed and /or specific duties involved in the employee’s appointments, evaluations and treatment. • Maintain contact with the EAP Counselors/SAP and the employee. • Advise whether the employee is compliant with the treatment requirements. If the employee is not compliant, why they are non-compliant.

Employees are allowed to use sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, to attend EAP appointments and treatment. It is appropriate to encourage an employee to attend a meeting after work, if an appointment is available, but supervisors shall not prohibit employees from attending appointments during work hours. If you or a supervisor question whether an employee is attending EAP appointments or treatment, you may contact the appropriate EAP Case Manager for verification.

All return-to-duty and follow-up tests will be conducted under direct observation conditions. SCOs will coordinate with the collection site to ensure that same gender collectors are available on the day of testing.

The Follow-Up Evaluation and Return-to-Duty Process

This process includes an evaluation by the EAP Counselors/SAP with the employee and the EAP Counselor’s/SAP’s requirements for follow-up and return-to duty testing which may include additional treatment requirements.

Employees must have a negative return-to-duty test and provide a completed return-to-work form when they have completed initial treatment and before they may be reinstated to driving duties.

Employees who are subject to return-to-duty testing must pass a return-to-duty drug and/or alcohol test when prescribed by the EAP Counselors/SAP prior to returning to driving duties. The employee must have an alcohol test result of less than 0.02 or a drug test with a negative result. If an employee has a return-to-duty alcohol test result of 0.02 or greater, but less than 0.04, the employee must be removed from work duties for 24 hours and must continue in initial treatment.

The following table shows the follow-up evaluation and return-to-duty process.

Follow-up Evaluation and Return to Duty Process	
Who	Action
EAP Counselors/SAP	<ul style="list-style-type: none"> • Meet with the employee to determine if the employee has demonstrated compliance with the initial evaluation treatment requirements. To complete this face to face clinical interview, the SAP will confer with and obtain appropriate documentation from the education and/or treatment program where the employee was referred. • Provide a written SAP letter with requirements whether the employee has demonstrated compliance with the treatment requirements. If the employee has demonstrated compliance, make requirements for continuing care needs and include the follow-up testing plan. Determine the return-to-duty test type and the number and type of follow-up tests to be completed.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Notify the SCO to take the employee for the return-to-duty test, whether drugs or alcohol or both and the requirement for direct observation and verification.
SCO or Supervisor	<ul style="list-style-type: none"> • Immediately upon receipt of the return-to-duty test notification, take the employee for the return-to-duty test. Follow the procedures in the Alcohol and Drug Tests section. • Verify drug test was conducted under direct observation and custody and control form is completed correctly. Verify alcohol test result of less than 0.02. • Retrieve test results from the current MRO test results notification system. If positive, the MRO will provide results by phone and fax.
SCO	<ul style="list-style-type: none"> • Notify the EAP Case Manager of the results of the return-to-duty test and verification of direct observation.
EAP Case Manager	<ul style="list-style-type: none"> • Receive results of the return-to-duty test from the SCO. • For negative test results: <ul style="list-style-type: none"> • Coordinate with the EAP Counselors/SAP and employee, if necessary for the completion of the Return-To-Work form, and • Fax completed return-to-work form to SCO and the Substance Abuse Program Staff of HRD. • For positive test results, advise that the employee is not compliant and why they are not compliant.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Complete the Follow-Up Testing Plan – the form will include the follow-up testing schedule which will identify each selection period the employee needs to be tested and the type of test, whether drugs or alcohol or both. • Fax or email the Follow-Up Testing Plan to the SCO.

Follow-up Evaluation and Return to Duty Process	
Who	Action
SCO or Supervisor (upon receipt of Return-to-Work form)	<ul style="list-style-type: none">• Advise the employee:<ul style="list-style-type: none">• they have completed initial treatment and are being returned to driving duties• of the requirement for follow-up testing, that they may be tested for up to 60 months and of the consequences of another positive test• they are transferring to the phase of treatment known as “aftercare”• to remain compliant with any continuing treatment or education requirements made by the EAP Counselors/SAP during the follow-up evaluation• to remain in contact with EAP Case Manager, the other treatment providers required by the EAP Counselors/SAP, and the aftercare team, and• failure to remain compliant with all EAP requirements will result in termination.

Aftercare Treatment

In aftercare treatment, employees may be subject to additional treatment requirements and follow-up testing for drugs and/or alcohol for a period of up to 60 months following their return-to-duty. At a minimum, the follow-up testing will consist of six tests in the first 12 months following the employee's return-to-duty. If an employee has a follow-up alcohol test result of 0.02 or greater, but less than 0.04, the employee must be removed from work duties for 24 hours and scheduled for another follow-up test at a later date.

Aftercare Treatment	
Who	Action
EAP Case Manager	<ul style="list-style-type: none"> • Continue contact with the employee until the case is transferred to the aftercare team for monitoring. • Advise the employee in writing when the case is transferred to the aftercare team. • Advise the Substance Abuse Program Staff of HRD whether the employee is compliant with the aftercare treatment requirements; and if the employee is not compliant, why they are non-compliant.
SCO or Supervisor	<ul style="list-style-type: none"> • Retrieve drug test results from the current MRO test results notification system of the previous follow-up test and ensure the result is negative before sending an employee for a subsequent follow-up test. • Send the employee for all follow-up tests as identified in the follow-up testing plan. • Ensure the required test types are being completed. • Notify the EAP Case Manager of any concerns related to the employee's drug or alcohol problem including work performance and DUI/DWI arrests.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Notify the EAP Case Manager of any tests completed with positive results and any alcohol tests with a result of 0.02 or greater or other concerns related to the employee's drug or alcohol problem including work performance and DUI/DWI arrests.
Employee	<ul style="list-style-type: none"> • Remain compliant with any continuing treatment or education requirements made by the EAP Counselors/SAP during the follow-up evaluation. • Maintain required contact with the EAP Case Manager, the aftercare team when transferred and any other treatment providers required by the EAP Counselors/SAP.

The Substance Abuse Program Staff of HRD will continue to monitor the referral for compliance and all required follow-up testing.

Completion of Treatment

Employees who are mandatorily referred to the EAP will be terminated from the department if they fail to complete treatment.

If the employee has met all requirements under his or her mandatory referral the employee will have completed treatment. The following table outlines this process:

Completion of Treatment	
Who	Action
EAP Case Manager	Verify follow-up testing is completed and no tests are awaiting results and all aftercare treatment requirements, including treatment required by the SAP, have been completed with the Substance Abuse Program Staff of HRD and the SCO.
Substance Abuse Program Staff of HRD	Verify that there are no tests awaiting results with the SCO.
EAP Case Manager	Provide the completion of treatment letter to the Substance Abuse Program Staff of HRD and SCO.
SCO or Supervisor	Advise the employee that: <ul style="list-style-type: none"> • they have completed all treatment requirements, and • any additional violations of the Substance Abuse Program Rules that require a second referral will result in termination.

Assessed as Not Needing Assistance

The following procedures are to be used if the employee is assessed as not needing assistance in resolving problems associated with alcohol or drug use:

Assessed as Not Needing Assistance	
Who	Action
SCO and Supervisor	<ul style="list-style-type: none"> • Upon receipt of a Mandatory Referral Compliance Form, advise the employee that they have been assessed by the EAP Counselors/SAPs as NOT needing assistance in resolving problems associated with alcohol or drug use. • Immediately take the employee for a return-to-duty drug or alcohol test for the following type of referral: <ul style="list-style-type: none"> • Reasonable Cause Positive Test • The return-to-duty test should be the same type of test that was positive or was refused. • Use the Forensic Drug Testing Custody and Control Form, if applicable. The clinic will provide the Alcohol Testing Form, if applicable. • Retrieve test results from the current MRO test results notification system. If positive, the MRO will provide results by phone or fax. • After receiving the negative alcohol or drug test results, advise the employee that: <ul style="list-style-type: none"> • the mandatory referral is closed and they are being returned to driving duties • if this is the first mandatory referral, it does not count toward the mandatory referral limit of one, and • a return-to-work form is not required.

Temporary Modified Duty

If the employee is able to work while in treatment, the department will assign duties, other than critical duties, if applicable and available. Employees must accept available temporary modified duty unless they are eligible for Family and Medical Leave (FML). Employees who refuse temporary modified duty will be subject to disciplinary action, up to and including termination. Temporary modified duty, if applicable and available, must be applied consistently for all employees. See the *Human Resources Policy Manual* for more information concerning FML or temporary modified duties.

If temporary modified duty is available, but the employee refuses the temporary modified duty assignment because they are eligible for FML, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

If temporary modified duty is not available, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

Mandatory Referral Limit

Employees are limited to one mandatory referral to the EAP for substance abuse violations. Therefore, employees who need to be mandatorily referred for a second substance abuse violation, including rehired department employees, will be terminated with the following exceptions:

- ◆ Employees who received and completed two mandatory referrals prior to January 1, 1999, will be terminated if they require a third mandatory referral.
- ◆ Employees who received and completed one mandatory referral prior to January 1, 1999, will be mandatorily referred for a second time, if necessary, and will be terminated if they require a third mandatory referral.

The following referrals will not count toward the mandatory referral limit of one:

- ◆ Employees assessed as not needing assistance with problems associated with an alcohol or drug abuse problem on his or her first mandatory referral, and
- ◆ Employees who are mandatorily referred for an alcohol- or drug-related driving offense. (Employees who receive two alcohol- or drug-related driving offenses within a ten-year period are terminated.)

Terminations

An employee will be terminated if they:

- ◆ fail to comply with a mandatory referral or to complete treatment, including aftercare
- ◆ test positive on any type of test while in treatment, including return-to-duty and follow-up tests
- ◆ refuse to take a required return-to-duty or follow-up test, or
- ◆ violate any other prohibition in the [Substance Abuse Program Rules](#) that results in termination.

§ 4 – Pre-Employment

Hiring

If an external final applicant for a department position has been convicted of felony charges related to selling, distributing, transporting, or manufacturing of illegal drugs or conspire to selling, distributing, transporting, or manufacturing of illegal drugs and they are on probation or parole for that conviction, they will not be hired by the department. If an external final applicant is hired by the department, and it is later discovered that the employee had been convicted prior to employment with the department and is on probation or parole for selling, distributing, transporting, or manufacturing illegal drugs, they will be immediately terminated from the department.

Testing Requirements

External Final Applicants

External final applicants for any department position are required to pass a pre-employment drug test if they may be required to drive for the department. Final applicants who fail to pass a pre-employment drug test will not be hired for that position.

Current employees who are hired, transferred, or promoted for department positions are not required to take pre-employment drug tests unless they are final applicants for commercial driver, vessel crewmember or safety-impact positions. Pre-employment testing information for these employees can be found in later chapters of this manual.

Testing Procedures

Pre-employment testing information for commercial drivers, safety-impact employees, and vessel crewmembers can be found in those chapters of this manual.

Pre-Employment Testing Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Advise interviewees of the department’s substance abuse policy and drug and alcohol testing procedures. • If the applicant requests the test results in writing, notify him or her to complete Form 2471, “Applicant or Employee Request for Drug or Alcohol Test Results.” • Inform the applicant that they must pass a physical exam, including a drug test, prior to becoming employed with the department. • Inform the applicant: <ul style="list-style-type: none"> • they are subject to a pre-employment inquiry if a commercial driver or vessel crewmember, and • they must pick up their Form 484, “Job Analysis and Physical Exam Record” and a Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” the next day. Make sure drug test requirement is checked off on the Form 484, “Job Analysis and Physical Exam Record.” • When the applicant comes to pick up their forms: <ul style="list-style-type: none"> • Provide to the final applicant a Forensic Drug Testing Custody and Control Form • Inform the applicant of collection sites. In most cases, an applicant will only have to go to one location for his or her physical exam and drug test. • Make an appointment with the clinic to have the services performed within five days • Advise the applicant to take photo identification, and • Inform the applicant they will not be allowed to begin work until they have a negative drug test result. • Notify the SCO of the applicant’s name and social security number.
SCO or HRO	<ul style="list-style-type: none"> • Fax the completed Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” to the Occupational Safety Division Substance Abuse Office the day of the test. • Note on the authorization form whether or not the employee is getting a pre-employment physical exam as well.
MRO	<ul style="list-style-type: none"> • Notify the SCO of the drug test result using the notification system.
SCO or HRO	<ul style="list-style-type: none"> • Notify the supervisor of the drug test result.
Supervisor	<ul style="list-style-type: none"> • Notify the applicant whether or not the department, after receiving the results of the drug test and the pre-employment physical exam, will hire him or her. • If the applicant requests the test results in writing, notify him or her of the results of their pre-employment drug test, including the names of the drugs verified as positive, if applicable.

An applicant will not begin work for the department until they have passed his or her physical exam and have a negative pre-employment drug test result.

Current employees who have a positive pre-employment drug test result will not be hired, transferred, or promoted to that position. In addition, the employee will be mandatorily referred to the EAP.

Final Applicants

A final applicant will not be hired if he or she:

- ◆ does not report for pre-employment testing, or
- ◆ is unable to provide a urine specimen and does not provide documentation of a medical condition, or
- ◆ has a positive pre-employment drug test result.

If a final applicant appears to have refused to test, please call the Substance Abuse Program Staff of HRD.

§ 5 – Reasonable Cause Testing

Overview

An employee who is reasonably suspected of working under the influence of drugs or alcohol, or who has a severe vehicle incident while driving for the department or severe injury, will be required to undergo a drug or alcohol test. **If the employee under suspicion is certified as a commercial driver, vessel crewmember, or safety-impact employee, refer to the appropriate chapters of this manual.**

The decision to test must be based on a reasonable belief by a supervisor or SCO, who has been trained on the signs and symptoms of drug or alcohol use, that the employee is suspected of working under the influence. The belief must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance indicators of probable use. The observations of physical, behavioral, or performance indicators of probable use may include indications of the chronic use and withdrawal effects of drugs.

Making a reasonable cause determination also requires some evidence of probable linkage between behavior or events and drug or alcohol use on the job or the performance of duties under the influence of drugs or alcohol. The supervisor should show that there are objective facts pointing to drug or alcohol affected behavior which cause a work-related problem.

Physical or behavioral signs and symptoms of drug or alcohol use which cause a work-related problem may be caused by reasons other than drug or alcohol use. For example, poor coordination may be caused by exhaustion due to a lack of sleep. A believable explanation may eliminate the suspicion of drug or alcohol use, but it does not eliminate the need for disciplinary action for a work-related problem. Tell the employee of the observations and facts that formed the basis of the conclusion that the employee is working under the influence of drugs or alcohol and ask the employee for an explanation of the signs and symptoms.

Making a reasonable cause determination when an employee has had a serious vehicle incident or injury requires a determination that the incident or injury is severe. Form [2551](#), “Indicators of Serious Accident or Injury” lists the criteria that must be met for a vehicle incident/injury to be severe. If the employee is directly involved in the vehicle incident or injury and meets one of the criteria 2 through 6, reasonable cause testing will be initiated. Form 2551 can be used alone to determine reasonable cause drug and alcohol testing or in conjunction with Form [2468](#), “Indicators of Alcohol Use” or Form [2469](#), “Indicators of Drug Use.”

Reports from Co-Workers or Other Witnesses

If co-workers or other witnesses report a specific event or behavior, the supervisor should ask them to describe exactly what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was drug or alcohol related? On what basis did they reach their conclusion?

Supervisors or SCOs should validate all co-worker reports through closer observation of the employee. It may also be appropriate to discuss the reports with the employee. However, the names of witnesses should not be given to the employee. Be sure to document all reports and discussions with employees and co-workers.

SCOs or supervisors can consider co-worker concerns and should call the Substance Abuse Program Staff of HRD to discuss these concerns. If the supervisor or SCO validates co-worker concerns, follow the Reasonable Cause Testing Determination Procedures.

Reasonable Cause Testing Determination Procedures

Reasonable Cause Testing WILL NOT be conducted UNLESS:

- ◆ the decision to test is made by the SCO and a supervisor who has been trained on the signs and symptoms of drug and alcohol use and on department policy and procedures, and
- ◆ the supervisor documents physical or behavioral indicators of drug or alcohol use, serious accident or injury, and any related work performance problems, and
- ◆ the SCO concurs with the supervisor's recommendation for a reasonable cause test, and
- ◆ the testing has been authorized by the Substance Abuse Program Staff of HRD, and
- ◆ the testing has been approved by the appropriate DE/DD or designee or applicable member of the Administration.

Refer to Form [2468](#), "Indicators of Alcohol Use," Form [2469](#), "Indicators of Drug Use," Form [2470](#), "Indicators of Work Performance Problems," Form [2551](#), "Indicators of Serious Accident or Injury," and Form [2467](#), "Reasonable Cause Determination Checklist." Refer also to the [Appendix](#) for additional information on Reasonable Cause.

The **supervisor** should follow these procedures to determine whether there is reasonable cause to test an employee for alcohol or drugs:

Reasonable Cause Testing Determination Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Observe the employee’s behavior if there is reason to believe that the employee may be working under the influence of drugs or alcohol, or determine if the employee had a serious vehicle incident while driving for the department or severe injury. • Complete Form 2469, “Indicators of Drug Use,” Form 2468, “Indicators of Alcohol Use,” Form 2551, “Indicators of Serious Accident or Injury,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist.” • Contact the SCO for guidance. • Discuss your observations with the employee in an attempt to discover non-substance abuse related reasons for the behavior, symptom, or event. A believable explanation may eliminate the suspicion of drug or alcohol use, but it does not eliminate the need for disciplinary action for a work-related problem.

When confronting employees about suspected substance abuse, denial should be an expected reaction. The employee may give many explanations and protests to avoid a drug or alcohol test or a mandatory referral. In these situations, state that you neither believe nor disbelieve the employee, that a request for a urine or breath specimen is not an accusation, but rather a request for additional objective data to put any suspicions to rest.

Possible outcomes from the discussion with the employee:

IF it is discovered that the employee’s performance is impaired due to the use of prescription drugs or over-the-counter substances,

THEN remove the employee from work duties as described in the [Unable to Perform Duties Safely](#) section of this chapter.

IF the employee voluntarily admits to having a drug or alcohol problem or using in the workplace,

THEN follow the procedures in the [Admitting to Drug/Alcohol Problem or Use in the Workplace](#) section.

IF you do not have enough indicators and documentation that the employee is working under the influence,

THEN continue to observe the employee, document any observations, and warn the employee that if it is subsequently discovered that they are working under the influence, they will be subject to administrative or disciplinary action, up to and including termination.

IF you do have enough indicators and documentation that the employee is working under the influence or had a serious accident while driving for the department or serious injury,

THEN continue following the procedures below for reasonable cause testing.

- ◆ Immediately contact the SCO by phone if you suspect that an employee is working under the influence of drugs or alcohol or was directly involved in a serious accident or injury. Discuss your observations with the SCO and the results of the discussion that you had with the employee. Document your conversation with the SCO.
- ◆ Fax an initialed copy of Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” Form [2551](#), “Indicators of Serious Accident or Injury,” Form [2470](#), “Indicators of Work Performance Problems,” and Form [2467](#), “Reasonable Cause Determination Checklist” to the SCO as soon as possible after the telephone contact.

When a reasonable cause testing decision is pending and the employee is a real and present danger to personal safety or property, the supervisor is responsible for removing the employee from driving duties. The employee will be reassigned to other duties or required to take his or her own accrued leave until 1) the employee is taken for a reasonable cause test and the results are reported, or 2) 24 hours have passed following the determination that the employee is working under the influence of drugs or alcohol.

The following are procedures for reasonable cause testing:

Reasonable Cause Testing Determination Procedures	
Who	Action
SCO	<ul style="list-style-type: none"> • Discuss with the supervisor the employee’s behavior and the information from the discussion between the supervisor and the employee. • Discuss with the employee, if appropriate. • Call the Substance Abuse Program Staff of HRD to determine whether there is enough justification and documentation to test the employee based on Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2551, “Indicators of Serious Accident or Injury,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist.”
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Review the SCO’s and supervisor’s recommendation and all available documentation. • Determine whether there is enough justification and documentation to test the employee based on Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2551, “Indicators of Serious Accident or Injury,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist,” and any other information. • Determine whether or not the employee should be tested for drugs, alcohol, or both. • Authorize reasonable cause testing, if appropriate.
SCO	<ul style="list-style-type: none"> • Immediately contact the appropriate DE/DD or applicable member of the Administration, discuss the observations, your recommendations and the recommendations of the Substance Abuse Program Staff of HRD. • Submit Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2551, “Indicators of Serious Accident or Injury,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist” to him or her as soon as possible after the telephone contact.
DE/DD, Applicable Member of the Administration or Designee	<ul style="list-style-type: none"> • Review the recommendations of the supervisor, SCO and Substance Abuse Program Staff of HRD and the available information. • Verbally approve or deny the recommendation to test.
SCO	<ul style="list-style-type: none"> • Upon the decision to test, the employee must be removed from driving duties until the test results are reported by the MRO. • Document when verbal approval is given by DE/DD or applicable member of the Administration for a reasonable cause test. • Contact the supervisor when the DE/DD or applicable member of the Administration gives verbal approval. Be sure to tell the supervisor whether the employee will be tested for drugs, alcohol, or both. • Prepare and fax to the supervisor or clinic Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” Contact the clinic to ensure they are aware of the reasonable cause test request. • Initial the Form 2467, “Reasonable Cause Determination Checklist” once received from the supervisor. • Forward the original Form 2467, “Reasonable Cause Determination Checklist” to the appropriate DE/DD or applicable member of the Administration for their initials. • Fax or email a copy of Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2551, “Indicators of Serious Accident or Injury,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist” to the Substance Abuse Program Staff of HRD for initials and retention.

Note: Form [2467](#), “Reasonable Cause Determination Checklist,” must be completed with all initials within 24 hours after the incident. All documentation related to making a determination to test must be attached to the Checklist, all of which should be submitted to the Substance Abuse Program Staff of HRD.

Testing Time Limits

Reasonable cause testing for alcohol and drugs must be administered within the specified time periods:

- ◆ **Alcohol** tests must be administered within two hours of the testing determination. If not administered within the two hours, continue to try and administer a test for up to eight hours. No alcohol test will be administered after eight hours have passed.
- ◆ **Drug** tests must be administered within 32 hours of the testing determination. No drug test will be administered after 32 hours have passed.

Note: If the 2-hour, 8-hour or 32-hour deadlines are not met, the reason(s) must be documented on the “Reasonable Cause Determination Checklist.”

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test, follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

All reasonable cause testing decisions must be authorized by the Substance Abuse Program Staff of HRD and approved by the DE/DD or applicable member of the Administration, or designee not below the level of Deputy DE, Deputy DD, or Business Services Coordinator prior to administering a reasonable cause test.

§ 6 – Alcohol and Drug Tests

Overview

The alcohol and drug testing procedures outlined in this section should be followed when an employee must undergo drug or alcohol testing as required in the Substance Abuse Program Rules.

Alcohol Tests

The following procedures should be used to process alcohol testing and what actions to take with a positive test result.

Testing Process	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Fill out Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” The Breath Alcohol Technician will provide the employee with a Non-DOT Alcohol Testing Form at the time of the test. • Transport the employee to a collection site and wait for the results of the alcohol test. • Fax a copy of the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.

If Test Results Are 0.02 or Greater, but Less Than 0.04	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Inform the employee that they will have to take their own sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until 24 hours have passed. • Make every effort to ensure that the employee does not drive home. Offer to drive the employee home or to contact someone to pick him or her up at the collection site. • Notify the SCO or Supervisor of the test result and the actions you took. • Notify the Substance Abuse Program Staff of HRD of the test results. • Return the employee to their normal duties after 24 hours have passed from the time the employee was tested.
Collection Site	Fax the test results to the employer.

If Test Results Are 0.04 or Greater	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Inform the employee that they will have to take their own sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until 24 hours have passed. • Make every effort to ensure that the employee does not drive home. Offer to drive the employee home or to contact someone to pick him or her up at the collection site. • Notify the SCO or supervisor of the test result and the actions you took. • Immediately remove the employee from driving duties. • Notify the Substance Abuse Program Staff of HRD of the test results. • Mandatorily refer the employee to the EAP when they report to work after 24 hours have passed. (See the Mandatory Referrals section of this chapter)
Collection Site	Fax the test results to the employer.

Drug Tests

The following procedures should be used to process drug testing and what actions to take with a positive test result:

Drug Tests	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Fill out Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” • Take a Forensic Drug Testing Custody and Control Form with you. • Transport the employee to a collection site. • Fax the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.
Collection Site Personnel	Fax Copy 2 of the Custody and Control Form to the MRO’s office; Copy 4 of the Custody and Control Form to the employer.
MRO	Notify the Substance Abuse Program Staff of HRD and the SCO of the positive test result in writing or of a negative result for all test types.
SCO	Notify the employee’s supervisor of the drug test result.
Supervisor	Notify the employee of the drug test result. For positive test results, <ul style="list-style-type: none"> • Immediately remove the employee from driving duties. • Mandatorily refer the employee to the EAP. (See the Mandatory Referrals section of this chapter)

SCOs can check the drug test notification system for test results. If the drug test results are not available after three days, please contact the Substance Abuse Program Staff of HRD.

Negative Dilute Drug Test Results

Overview

If a drug test has a negative dilute test result, the employee or final applicant will be directed to take another test.

The second drug test must NOT be collected under direct observation, unless there is another basis for the use of direct observation. Direct observation will only be decided by collection site personnel and the Medical Review Officer.

The result of the second drug test becomes the test of record. If the second test has the same result, the employee will NOT be sent for another test.

If the directed final applicant or employee declines to take the second drug test, it is considered a refusal to test. Notify the Substance Abuse Program Staff of HRD if a final applicant or employee appears to have refused to test.

Procedures for Negative Dilute Specimens

The following table shows the process for handling negative dilute specimens:

Procedures for Negative Dilute Specimens	
Who	Action
MRO	<ul style="list-style-type: none"> Report the negative dilute test to HRD.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Notify the SCO of the negative dilute drug test result and the requirement to send the final applicant or transport the employee for the second drug test. The final applicant or employee is given the minimum possible advance notice that they must go to the collection site.
SCO, HRO or Supervisor	<ul style="list-style-type: none"> Complete the Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” Give the final applicant or employee a Forensic Drug Testing Custody and Control Form. Fax the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.
MRO	<ul style="list-style-type: none"> Notify the Substance Abuse Program Staff of HRD and the SCO of the positive test result in writing or of a negative for all test types.
SCO or Supervisor	<ul style="list-style-type: none"> Notify the final applicant or employee of the drug test result.

Note: Notification of retest to the SCO or HRO for pre-employment is based on information from the faxed Form [2007](#), “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” that was sent to the Occupational Safety Division Substance Abuse Office.

Chapter 3 – Employees Who Drive for the Department

§ 1 – Introduction

Overview

The Texas Department of Transportation implemented the Substance Abuse Program Rules in 1989. The current rules were effective in January 2009 and published in [Title 43, Texas Administrative Code, §§4.30 – 4.46](#).

The policies and procedures found in this chapter applies to employees who may be required to drive for the department and who receive an alcohol- or drug-related driving offense or whose driver's license is suspended due to an offense involving alcohol- or drugs.

DE/DDs and applicable member of the administration are responsible for checking the driving records of employees at least once a year. All employees who drive for the department are subject to this policy and are required to sign Form [1835](#), "Alcohol- or Drug-Related Driving Offense Policy and Driving Requirements Policy Statement of Notification."

Employees who lose the legal authority to drive must comply with the requirements described under [Loss of Legal Authority to Drive](#) and employees who receive an alcohol- or drug-related driving offense must comply with the requirements under [Alcohol- or Drug-Related Driving Offenses](#).

Definitions

Driving for the department includes operating a vehicle, including an automobile, truck, motor-driven equipment, roller, tractor, grader, ferry, or aircraft, during the course and scope of employment, without regard to ownership of the vehicle or the frequency of operation. An employee holds a position that involves driving for the department if the position may require driving for the department. This includes employees who drive personal vehicles to meetings, training, conferences, etc.

Alcohol- or Drug-Related Driving Offense includes a conviction or deferred adjudication for any offense involving the driving of a vehicle, whether on-duty or off-duty, while under the influence of alcohol or drugs or while intoxicated.

Critical duties include driving, commercial driving, performing safety-impact activities, performing vessel crewmember duties, operating motorized equipment, supervising or assisting with the loading or unloading of a motor vehicle, and inspecting, servicing, or maintaining any vehicle.

§ 2 – Prohibited Conduct & Administrative/Disciplinary Actions

Overview

In addition to requiring that employees be subject to the prohibitions described in [Chapter 2, All Department Employees](#), employees who are authorized to drive for the department are also prohibited from engaging in any of the policy violations described below.

Loss of Legal Authority to Drive

An employee who has lost the legal authority to drive must not drive or operate any motorized equipment for the department until they have reported this fact to their supervisor and obtained a valid regular or occupational license prior to driving for the department.

If an employee has lost the legal authority to drive due to any offense involving alcohol or drugs, including arrests or convictions, on or off the job, including administrative license revocation due to multiple tickets for moving traffic violations, then they will be:

- ◆ required to report the loss of legal authority to drive within one workday upon return to work after the loss of the legal authority to drive to his or her supervisor; and
- ◆ immediately removed from driving duties and reassigned to non-driving duties, if available, or they will be required to take vacation leave, compensatory time or leave without pay, if all accrued leave is exhausted, until they show proof of a valid regular or occupational driver's license. Sick leave cannot be taken for time off due to the loss of the legal authority to drive.

IF the employee fails to report the loss of legal authority to drive,

THEN the supervisor will:

- ◆ remove the employee from driving duties until they show proof of a valid regular or occupational driver's license;
- ◆ counsel the employee; and
- ◆ suspend the employee for three days without pay.

OR

IF the employee has lost the legal authority to drive due to an offense involving alcohol or drugs, including arrests or convictions, on or off the job, including administrative license revocation due to multiple tickets for moving traffic violations, and it is subsequently discovered and documented by the department that the employee has driven for the department without a valid license,

THEN the supervisor will terminate the employee.

OR

IF the employee has lost the legal authority to drive due to an offense involving alcohol or drugs, including arrests or convictions, on or off the job, including administrative license revocation due to multiple tickets for moving traffic violations, and it is subsequently discovered and documented by the department that the employee has NOT driven for the department without a valid license,

THEN the supervisor will:

- ◆ remove the employee from driving duties until they show proof of a valid regular or occupational driver's license;
- ◆ counsel the employee; and
- ◆ suspend the employee for three days without pay.

A supervisor who knows that an employee is not legally authorized to drive and allows an employee to drive or operate motorized equipment will be subject to disciplinary action.

An employee must have a valid driver's license to drive for the department. An occupational driver's license will be accepted if it specifies the geographical areas and time periods that the employee can perform his or her driving duties for the department.

Alcohol- or Drug-Related Driving Offenses

If an employee receives an alcohol- or drug-related driving offense due to driving under the influence of alcohol or drugs or while intoxicated whether on duty or off duty, then they will be:

- ◆ required to notify his or her supervisor of the alcohol- or drug-related driving offense within one workday upon return to work after the offense. **If the employee does not report the offense and it is subsequently discovered by the department, the employee will be suspended for three days without pay.**
- ◆ immediately removed from driving duties,
- ◆ mandatorily referred to the Employee Assistance Program (EAP),
- ◆ reassigned to non-driving duties, if applicable and available, or required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided,
- ◆ required to show proof that they have a valid regular or occupational driver's license that allows performance of driving duties before returning to any driving duties, and
- ◆ required to complete whatever treatment recommendations the EAP Counselors/Substance Abuse Professionals (SAPs) makes, including aftercare, or be terminated.

An employee who is mandatorily referred to the EAP for an alcohol- or drug-related driving offense must complete initial treatment and obtain a completed return-to-work form before returning to driving duties, even if they have obtained an occupational driver's license.

§ 3 – Final Applicants

Overview

If a final applicant for a department position may be required to drive for the department, the Human Resources Officer (HRO) will check the driving record of the final applicant for the three-year period prior to the date of the application.

Alcohol- or Drug-Related Driving Offenses

IF a final applicant for any position where driving is an essential or marginal function has received only one alcohol- or drug-related driving offense within the last three years,

THEN the hiring supervisor should hire that final applicant if, once hired, they agree to:

- ◆ be mandatorily referred to the EAP;
- ◆ not drive for the department until they provide a completed return-to-work form; and
- ◆ complete whatever treatment recommendations the EAP Counselors/SAP makes, including aftercare.

An alcohol- or drug-related driving offense received prior to employment with the department will not count toward the two alcohol- or drug-related driving offenses that result in termination as described in the [Mandatory Referrals](#) section.

IF a final applicant for any position where driving is an essential or marginal function has received two or more alcohol- or drug-related driving offenses within the last three years,

OR

IF a final applicant for a seasonal position where driving is an essential function has received one or more alcohol- or drug-related driving offenses within the last three years,

THEN the hiring supervisor will not hire that final applicant.

§ 4 – Mandatory Referrals

Overview

The procedures outlined in this section will be followed for employees who engage in actions prohibited by the department that require removal from critical duties and a mandatory referral to the EAP.

Mandatory Referral Procedures

The Referral

The process through which the SCO or supervisor explain to the employee the mandatory referral process and requirements to complete treatment.

The Referral	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Meet with the employee and give him or her a copy of the Form 2474, Mandatory Referral Letter. • Advise the employee: <ul style="list-style-type: none"> • that they are being mandatorily referred to the EAP and the reason for the referral • they must comply with the mandatory referral process and any treatment requirements made by the EAP Counselors/SAP or any other treatment provider, including aftercare • mandatory referral process includes the referral, initial evaluation, treatment, follow-up evaluation, return-to-work form, and aftercare • information regarding his or her referral will be kept confidential – personnel with information on the referral are supervisor, SCO, Substance Abuse Program Staff of HRD, EAP Case Manager, EAP Counselors/SAP, and the EAP Aftercare Team, and • failure to comply with any stage of the referral will result in termination. • Ask the employee if they have any questions. • Have the employee sign the Mandatory Referral Letter and give him or her a copy.
SCO	<ul style="list-style-type: none"> • Call 1-866-34TXDOT (866-348-9368). Inform the counselor that you are making a TxDOT mandatory referral, the employee’s name and social security number (SSN), the type of employee, the reason for the referral, and any other information requested by the counselor. <p>Caution: Employees shall not make the initial call to arrange their first appointment when they are being mandatorily referred. This process must be initiated by the SCO or the EAP will treat the referral as a self-referral.</p> <ul style="list-style-type: none"> • Have the employee talk to the EAP Counselors in private. Initial appointments will be available within three workdays of this contact. • Fax a copy of the Mandatory Referral Letter and the employee’s job profile to the EAP at (512) 328-3437 and fax or scan to the Substance Abuse Program Staff of HRD at (512) 486-5325 or HRD_RA-FAX-5124865325@txdot.gov as soon as possible after the referral call is made.

Initial Treatment

The EAP Counselors/SAP makes the initial assessment of treatment requirements that the employee must complete in order to return to work.

Initial Treatment	
Who	Action
EAP Counselors/SAP	<ul style="list-style-type: none"> • Meet with the employee and evaluate him or her to determine what assistance is needed by the employee to resolve problems associated with alcohol or drug use and make treatment requirements. • Refer the employee to a treatment provider that best meets the needs of the employee in a cost-effective manner. Whenever possible, the EAP Counselors/SAP will refer the employee to a treatment provider, which is covered by his or her insurance. • Provide the SAP letter following the initial evaluation to the Substance Abuse Program Staff of HRD and SCO.
Employee	<ul style="list-style-type: none"> • Continue to complete treatment requirements from the EAP Counselors/SAP. During initial care the employee will maintain contact with the EAP Counselors/SAPs, the SCO, and the EAP Case Manager. • Provide information to the EAP Counselors/SAP when they have completed the treatment requirements.
EAP Case Manager	<ul style="list-style-type: none"> • Provide information about the employee’s ability to work while in treatment, time off work needed, and /or specific duties involved in the employee’s appointments, evaluations, and treatment. • Maintain contact with the EAP Counselors/SAP and the employee. • Advise whether the employee is compliant with the treatment requirements. If the employee is not compliant, why they are non-compliant.

Employees are allowed to use sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, to attend EAP appointments and treatment. It is appropriate to encourage an employee to attend a meeting after work, if an appointment is available, but supervisors shall not prohibit employees from attending appointments during work hours. If you or a supervisor question whether an employee is attending EAP appointments or treatment, you may contact the appropriate EAP Case Manager for verification.

Return-to-Work

A completed return-to-work form must be provided by the EAP when the employee has completed initial treatment and before the employee may be reinstated to critical duties.

The EAP will coordinate the completed return-to-work form with the EAP Counselors/SAP and forward it to the SCO and the Substance Abuse Program Staff of HRD.

Aftercare Treatment

In aftercare treatment employees may be subject to additional treatment requirements.

Aftercare Treatment	
Who	Action
EAP Case Manager	<ul style="list-style-type: none"> Continue contact with the employee until the case is transferred to the aftercare team for monitoring. Advise the employee in writing when the case is transferred to the aftercare team. Advise the Substance Abuse Program Staff of HRD whether the employee is compliant with the aftercare treatment requirements; and if the employee is not compliant, why they are non-compliant.
SCO or Supervisor	<ul style="list-style-type: none"> Notify the EAP Case Manager of any concerns related to the employee’s drug or alcohol problem including work performance and other alcohol or drug-related issues.
Employee	<ul style="list-style-type: none"> Remain compliant with any continuing treatment or education requirements made by the EAP Counselors/SAP during the follow-up evaluation. Maintain required contact with the EAP Case Manager, the aftercare team when transferred, and any other treatment providers required by the EAP Counselors/SAP.

Completion of Treatment

Employees who are mandatorily referred to the EAP will be terminated from the department if they fail to complete treatment.

If the employee has met all requirements under his or her mandatory referral, the employee will have completed treatment. The following table outlines this process:

Completion of Treatment	
Who	Action
EAP Case Manager	<ul style="list-style-type: none"> Verify all aftercare treatment requirements, including treatment required by the SAP, have been completed with the Substance Abuse Program Staff of HRD and the SCO.
EAP Case Manager	<ul style="list-style-type: none"> Provide the completion of treatment letter to the Substance Abuse Program Staff of HRD and SCO.
SCO or Supervisor	<ul style="list-style-type: none"> Advise the employee that: <ul style="list-style-type: none"> they have completed all treatment requirements, and a second alcohol- or drug-related driving offense within ten years will result in termination.

Assessed as Not Needing Assistance

The following procedures are to be used if the employee is assessed as not needing assistance in resolving problems associated with alcohol or drug use:

Assessed as Not Needing Assistance	
Who	Action
SCO and Supervisor	<ul style="list-style-type: none"> Upon receipt of a Mandatory Referral Compliance Report, advise the employee that they have been assessed by the EAP Counselors/SAPs as NOT needing assistance in resolving problems associated with alcohol or drug use. Return to the employee to critical duties. <p>Note: An employee assessed by the EAP as not needing assistance with problems associated with alcohol or drug use is not required to have a completed return-to-work form.</p>

Temporary Modified Duty

If the employee is able to work while in treatment, the department may assign non-driving duties, if applicable and available.

Employees must accept available temporary modified duty unless they are eligible for Family and Medical Leave (FML). Employees who refuse temporary modified duty will be subject to disciplinary action, up to and including termination. Temporary modified duty, if available, must be applied consistently for all employees. See the *Human Resources Policy Manual* for more information concerning FML or temporary modified duties.

If temporary modified duty is available, but the employee refuses the temporary modified duty assignment because they are eligible for FML, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

If temporary modified duty is not available, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

Mandatory Referral Limit

Employees are limited to one mandatory referral to the EAP for substance abuse violations. Therefore, employees who need to be mandatorily referred for a second substance abuse violation, including **rehired department employees**, will be terminated with the following exceptions:

- ◆ Employees who received and completed two mandatory referrals prior to January 1, 1999, will be terminated if they require a third mandatory referral.
- ◆ Employees who received and completed one mandatory referral prior to January 1, 1999, will be mandatorily referred for a second time, if necessary, and will be terminated if they require a third mandatory referral.

The following referrals will not count toward the mandatory referral limit of one:

- ◆ Employees assessed as not needing assistance with problems associated with an alcohol or drug abuse problem on his or her first mandatory referral, and
- ◆ Employees who are mandatorily referred for an alcohol- or drug-related driving offense. (Employees who receive two alcohol- or drug-related driving offenses within a ten-year period are terminated.)

Chapter 4 – Commercial Drivers

§ 1 – Introduction

Federal Requirement

The Federal Motor Carrier Safety Administration (FMCSA) regulations (49 CFR Part 382) require mandatory drug and alcohol testing of all commercial drivers.

Definitions

A **Commercial Driver** is an employee who has a Commercial Driver's License (CDL) and who operates a Commercial Motor Vehicle for the department, regardless of the frequency.

A **Commercial Motor Vehicle (CMV)** is a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:

- ◆ has a gross combination weight rating of 26,001 or more pounds including a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- ◆ has a gross vehicle weight rating of 26,001 or more pounds; or
- ◆ is designed to transport 16 or more passengers, including the commercial driver; or
- ◆ is of any size and is used in the transportation of materials that are considered hazardous under the Hazardous Materials Transportation Act, 49 USC §5103(b), and that require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, Subpart.

Operating a CMV means from the time a driver begins to work or is required to work until the time they are relieved from work and all responsibility for performing work. These functions include:

- ◆ all time while on duty including waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- ◆ inspecting equipment, servicing, or conditioning any commercial motor vehicle at any time;
- ◆ all time at the driving controls of a commercial motor vehicle in operation;
- ◆ all time, other than driving time, in or upon any commercial motor vehicle;
- ◆ loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- ◆ repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Critical duties include driving, commercial driving, performing safety-impact activities, performing vessel crewmember duties, operating motorized equipment, supervising or assisting with the loading or unloading of a motor vehicle, and inspecting, servicing, or maintaining any vehicle.

Types of Testing

Commercial Drivers will be subject to the following types of testing:

Pre-Employment Testing	Drugs Only
Post-Accident Testing	Drugs AND Alcohol
Reasonable Cause Testing	Drugs and/or Alcohol
Random Testing	Drugs and/or Alcohol

Training

The department will conduct an alcohol and drug-free awareness program which will provide all employees with initial mandatory training and periodic training as needed regarding the department’s Substance Abuse Program Rules, the personnel actions that will be taken for violations of the policy, the specifics of the program, the dangers of alcohol, inhalant, and drug abuse in the workplace, and EAP.

§ 2 – Prohibited Conduct & Administrative/Disciplinary Actions

Overview

In addition to requiring that commercial drivers be subject to the prohibitions described in [Chapter 2, All Department Employees](#) and [Chapter 3, Employees Who Drive for the Department](#), commercial drivers are also prohibited from engaging in any of the policy violations described below.

If a commercial driver engages in any of the following activities:

- ◆ drinks alcohol within four hours prior to coming to work,
- ◆ drinks or possesses alcohol while on duty, or while driving a commercial motor vehicle,
- ◆ uses alcohol within eight hours following an on-the-job accident or prior to undergoing a post-accident alcohol test,
- ◆ reports to work under the influence of drugs or alcohol,
- ◆ has a positive drug test result or an alcohol test result of 0.04 or greater, or
- ◆ voluntarily admits to an alcohol or drug problem or using alcohol or drugs in the workplace,

Then the supervisor or the Substance Control Officer (SCO) will:

- ◆ immediately remove the employee from critical duties;
- ◆ mandatorily refer the employee to the Employee Assistance Program (EAP);
- ◆ reassign the employee to non-critical duties, if available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests; and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/Substance Abuse Professional (SAP) makes, including aftercare, or be terminated.

Note: If an employee has an alcohol test result of 0.02 or greater, but less than 0.04, then refer to [Alcohol and Drug Tests](#) section of this chapter.

An employee will be terminated from the department if the employee refuses to test or has a positive drug test result or an alcohol test result of 0.04 or greater and is still in their initial probationary period, or is a project or temporary employee.

Working Under the Influence

If a commercial driver is **suspected of working under the influence of drugs or alcohol**, due to a reasonable belief by a supervisor or SCO which is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance of the employee, while on duty, including when operating or riding in a state vehicle, then the supervisor and the SCO will:

- ◆ immediately remove the employee from his or her work duties for 24 hours and require him or her to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted;
- ◆ take the employee for a reasonable cause test if there is enough evidence and documentation **AT THAT SPECIFIC TIME** to support [Reasonable Cause Testing](#);
- ◆ continue the removal of the employee from any critical duties **UNTIL**:
 - a negative drug test result is reported by the MRO, or
 - an alcohol test result less than 0.02 is reported;
- ◆ mandatorily refer the employee to the EAP if a positive drug test or alcohol test result of 0.04 or greater is reported;
- ◆ reassign the employee to non-critical duties, if available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests; and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/SAP makes, including aftercare, or be terminated.

Evidence to support reasonable cause testing is based on observed and documented physical, behavioral, or performance indicators of probable use. Supervisors must complete Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” Form [2470](#), “Indicators of Work Performance Problems,” and Form [2467](#), “Reasonable Cause Determination Checklist,” AND have the approval from all required parties before taking an employee for a reasonable cause test. See the [Reasonable Cause Testing](#) section for more information.

OR

IF reasonable cause testing is not possible, after approval from all required parties, due to extenuating circumstances (i.e., closed collection site, testing equipment problems or other unforeseen reasons),

THEN the SCO and supervisor will:

- ◆ immediately remove the employee from his or her work duties for 24 hours and require him or her to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted;
- ◆ mandatorily refer the employee to the EAP when 24 hours have passed;

- ◆ reassign the employee to non-critical duties, if available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests; and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/SAP makes, including aftercare, or be terminated.

OR

IF there is NOT enough evidence and documentation at the time to support reasonable cause testing and the employee denies working under the influence of drugs or alcohol, or refuses to explain his or her actions,

THEN the SCO or supervisor will take no further action, but will advise the employee that if it is subsequently discovered that they are working under the influence, they will be subject to administrative/disciplinary action.

Note: If there is any reason to believe that the employee is a safety risk to themselves or others, the supervisor should not allow the employee to perform critical duties.

Positive Test

If an employee tests **positive on a drug test or has an alcohol test result of 0.04 or greater**, the supervisor and the SCO will:

- ◆ immediately remove the employee from critical duties;
- ◆ remove the employee from duties for 24 hours after a positive alcohol test;
- ◆ mandatorily refer the employee to the EAP according to the procedures in the [Mandatory Referrals](#) section of this chapter;
- ◆ reassign the employee to non-critical duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests, if prescribed; and
- ◆ require the employee to complete whatever treatment recommendations the EAP makes, including aftercare, or be terminated.

Note: If an employee has an alcohol test result of 0.02 or greater, but less than 0.04, refer to the [Alcohol and Drug Tests](#) section of this chapter.

An employee will be terminated from the department if the employee refuses to test or has a positive drug test result or an alcohol test result of 0.04 or greater and is still in their initial probationary period, or is a project or temporary employee.

Refusal to Test

If a commercial driver **refuses to submit to an alcohol or drug test** by:

- ◆ failing to appear for any test within a reasonable time;
- ◆ explicitly declines to take a required test, whether a first test or subsequent test;
- ◆ failing to remain at the testing site until the testing process is complete;
- ◆ failing to be readily available for drug and alcohol testing after a serious accident;
- ◆ failing to attempt to provide a urine/breath specimen for any test required;
- ◆ failing to permit a directly observed or monitored collection in a drug test;
- ◆ failing to provide a sufficient urine/breath specimen, and the physician has determined, through a required medical evaluation, that there was not adequate medical explanation for the failure;
- ◆ failing to undergo a medical examination or evaluation as directed by the employer;
- ◆ failing to sign the certification at Step 2 of the Alcohol Testing Form;
- ◆ failing to cooperate with any part of the testing process, including refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, failing to wash hands after being directed to do so by the collector, or any other uncooperative behavior;
- ◆ failing to follow the observer's instructions to raise clothing above the waist, lowering clothing and underpants, or turning around to permit the observer to determine if the employee has any type of prosthetic or other device that could be used to interfere with the collection process for an observed collection;
- ◆ possessing or wearing a prosthetic or other device that could be used to interfere with the collection process;
- ◆ admitting to the collector or medical review officer that the employee adulterated or substituted the specimen; or
- ◆ if the MRO reports a verified adulterated/substituted test result;

Then the SCO or supervisor will:

- ◆ be notified immediately;
- ◆ ask the collection site personnel to leave the room; and
- ◆ talk to the employee to remind him or her that refusal to take any drug or alcohol test will result in immediate termination.

IF the employee still refuses to test, THEN they will be terminated.

For situations when the employee fails to provide a sufficient urine/breath specimen, contact the Substance Abuse Program Staff of HRD.

Unable to Perform Duties Safely

If an employee is **unable to perform work duties in a safe manner due to the use of prescription drugs or over-the-counter substances**, while on duty, including when operating or riding in a state vehicle, the supervisor and the SCO will reassign the employee to non-critical duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted.

Admitting to Drug/Alcohol Problem or Use in the Workplace

If an employee voluntarily admits to having an alcohol, inhalant, or drug abuse problem or use in the workplace, the supervisor and the SCO will:

- ◆ immediately remove the employee from critical duties;
- ◆ mandatorily refer the employee to the EAP;
- ◆ reassign the employee to non-critical duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests (employees who admitted prior to performing any critical duties will not be required to complete follow-up testing); and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/SAP makes, including aftercare, or be terminated.

Note: Disciplinary action will not be taken against an employee who voluntarily admits to having a problem with alcohol, inhalant, or drug abuse, provided the admission occurs prior to a determination that the employee should be tested or mandatorily referred. Employees cannot admit to having an alcohol, inhalant, or drug abuse problem in order to avoid testing.

§ 3 – Mandatory Referrals

Overview

The procedures outlined in this section will be followed for commercial drivers who engage in actions prohibited by the department that require removal from critical duties and a mandatory referral to the EAP.

Mandatory Referral Procedures

The Referral

The process through which the SCO or supervisor explains to the employee the mandatory referral process and requirements to complete treatment.

The Referral	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Meet with the employee and give him or her a copy of the Form 2474, Mandatory Referral Letter. • Advise the employee that: <ul style="list-style-type: none"> • they are being mandatorily referred to the EAP and the reason for the referral • they must comply with the mandatory referral process and any treatment requirements made by the EAP Counselors/SAP or any other treatment provider, including aftercare • mandatory referral process includes the referral, initial evaluation, treatment, follow-up evaluation, return-to-duty test, return-to-work form, aftercare, and follow-up testing • information regarding his or her referral will be kept confidential – personnel with information on the referral are supervisor, DE/DD/Administration, SCO, Substance Abuse Program Staff of HRD, EAP Case Manager, EAP Counselors/SAP, and the EAP Aftercare Team • they will be subject to return-to-duty and follow-up testing, and • failure to comply with any stage of the referral will result in termination. • Ask the employee if they have any questions, and • Have the employee sign the Mandatory Referral Letter and give him or her a copy.
SCO	<ul style="list-style-type: none"> • Call 1-866-34TXDOT (866-348-9368). Inform the counselor that you are making a TxDOT mandatory referral, the employee’s name and social security number (SSN), the type of employee, the reason for the referral, and any other information requested by the counselor. <p>Caution: Employees shall not make the initial call to arrange their first appointment when they are being mandatorily referred. This process must be initiated by the SCO or the EAP will treat the referral as a self-referral.</p> <ul style="list-style-type: none"> • Have the employee talk to the EAP Counselors in private. Initial appointments will be available within three workdays of this contact. • Fax a copy of the Mandatory Referral Letter and the employee’s job profile to the EAP at (512) 328-3437 and to the Substance Abuse Program Staff of HRD at (512) 486-5325 as soon as possible after the referral call is made.

Employees shall not make the initial call to arrange their first appointment when they are being mandatorily referred. This process must be initiated by the SCO or the EAP will treat the referral as a self-referral.

Initial Treatment

The EAP Counselors/SAP makes the initial assessment of treatment requirements that the employee must complete in order to return to work.

Initial Treatment	
Who	Action
EAP Counselors/SAP	<ul style="list-style-type: none"> • Meet with the employee and evaluate him or her to determine what assistance is needed by the employee to resolve problems associated with alcohol or drug use and make treatment requirements. • Refer the employee to a treatment provider that best meets the needs of the employee in a cost-effective manner. Whenever possible, the EAP Counselors/SAP will refer the employee to a treatment provider that is covered by his or her insurance. • Provide the SAP letter following the initial evaluation as identified in 49 CFR Section 40.311 to the Substance Abuse Program Staff of HRD.
Employee	<ul style="list-style-type: none"> • Continue to complete treatment requirements from the EAP Counselors/SAP. During initial care the employee will maintain contact with the EAP Counselors/SAPs, the SCO, and the EAP Case Manager. • Provide information to EAP Counselors/SAP when they have completed the treatment requirements.
EAP Case Manager	<ul style="list-style-type: none"> • Provide information about the employee’s ability to work while in treatment, time off work needed, and /or specific duties involved in the employee’s appointments, evaluations, and treatment. • Maintain contact with the EAP Counselors/SAP and the employee. • Advise whether the employee is compliant with the treatment requirements. If the employee is not compliant, why they are non-compliant.

Employees are allowed to use sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, to attend appointments and treatment. It is appropriate to encourage an employee to attend a meeting after work, if an appointment is available, but supervisors shall not prohibit employees from attending appointments during work hours. If you or a supervisor question whether an employee is attending appointments or treatment, you may contact the appropriate EAP Case Manager for verification.

All return-to-duty and follow-up tests will be conducted under direct observation conditions. SCOs will coordinate with the collection site to ensure that same gender collectors are available on the day of testing.

The Follow-Up Evaluation and Return-to-Duty Process

This process includes an evaluation by the EAP Counselors/SAP with the employee and the EAP Counselor's/SAP's requirements for follow-up and return-to duty testing, which may include additional treatment requirements.

The employee must have a negative return-to-duty test, and a completed return-to-work form must be provided when the employee has completed initial treatment and before they may be reinstated to critical duties.

Employees who are subject to return-to-duty testing must pass a return-to-duty drug and/or alcohol test when prescribed by the EAP Counselors/SAP prior to returning to critical duties. The employee must have an alcohol test result of less than 0.02 or a drug test with a negative result. If an employee has a return-to-duty alcohol test result of 0.02 or greater, but less than 0.04, the employee must be removed from work duties for 24 hours and must continue in initial treatment.

The following table shows the follow-up evaluation and return-to-duty process:

Follow-up Evaluation and Return to Duty Process	
Who	Action
EAP Counselors/SAP	<ul style="list-style-type: none"> Meet with the employee to determine if the employee has demonstrated compliance with the initial evaluation treatment requirements. To complete this face-to-face clinical interview, the SAP will confer with and obtain appropriate documentation from the education and/or treatment program where the employee was referred. Provide a written SAP letter with requirements whether the employee has demonstrated compliance with the treatment requirements. If the employee has demonstrated compliance, make requirements for continuing care needs and include the follow-up testing plan. Determine the return-to-duty test and the number and type of follow-up tests to be completed.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Notify the SCO to take the employee for the return-to-duty test, whether drugs or alcohol or both and the requirement for direct observation and verification.
SCO or Supervisor	<ul style="list-style-type: none"> Immediately upon receipt of the return-to-duty test notification, take the employee for the return to duty test. Follow the procedures in the Alcohol and Drug Tests section. Verify drug test was conducted under direct observation and custody and control form is completed correctly. Verify alcohol test result of less than 0.02. Notify the Substance Abuse Program Staff of HRD of verification of direct observation or the drug test and alcohol test results. Retrieve test results from the current MRO test results notification system. If positive, the MRO will provide results by phone and fax.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Notify the EAP Case Manager of the results of the return-to-duty test and verification of direct observation.
EAP Case Manager	<ul style="list-style-type: none"> Receive results of the return-to-duty test from the SCO. For negative test results: <ul style="list-style-type: none"> Coordinate with the EAP Counselors and employee, if necessary, for the completion of the return-to-work form, and Fax the completed return-to-work form to the SCO and the Substance Abuse Program Staff of HRD. For positive test results, advise that the employee is not compliant and why they are not compliant.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Complete the Follow-Up Testing Plan – the form will include the follow-up testing schedule which will identify each selection period the employee needs to be tested and the type of test, whether drugs or alcohol or both. Fax or email the Follow-Up Testing Plan to the SCO.

Follow-up Evaluation and Return to Duty Process	
Who	Action
SCO or Supervisor (upon receipt of Return-to-Work form)	<ul style="list-style-type: none">• Advise the employee:<ul style="list-style-type: none">• they have completed initial treatment and are being returned to critical duties• of the requirement for follow-up testing, that they may be tested for up to 60 months and of the consequences of another positive test• they are transferring to the phase of treatment known as “aftercare”• to remain compliant with any continuing treatment or education requirements made by the EAP Counselors/SAP during the follow-up evaluation• to remain in contact with EAP Case Manager, the other treatment providers required by the SAP, and the aftercare team, and• failure to remain compliant with all EAP requirements will result in termination.

Aftercare Treatment

In aftercare treatment, employees may be subject to additional treatment requirements and follow-up testing for drugs and/or alcohol for a period of up to 60 months following their return-to-duty. At a minimum, the follow-up testing will consist of six tests in the first 12 months following the employee's return-to-duty. If an employee has a follow-up alcohol test result of 0.02 or greater, but less than 0.04, the employee must be removed from work duties for 24 hours and scheduled for another follow-up test at a later date.

Note: For confidentiality reasons, employees who need follow-up tests should not be sent to collection sites with employees who are being randomly tested.

Aftercare Treatment	
Who	Action
EAP Case Manager	<ul style="list-style-type: none"> • Continue contact with the employee until the case is transferred to the aftercare team for monitoring. • Advise the employee in writing when the case is transferred to the aftercare team. • Advise the Substance Abuse Program Staff of HRD whether the employee is compliant with the aftercare treatment requirements; and if the employee is not compliant, why they are non-compliant.
SCO or Supervisor	<ul style="list-style-type: none"> • Retrieve drug test results from the current MRO test results notification system of the previous follow-up test and ensure the result is negative before sending an employee for a subsequent follow-up test. • Send the employee for all follow-up tests as identified in the follow-up testing plan. • Ensure the required test types are being completed. • Notify the EAP Case Manager of any concerns related to the employee's drug or alcohol problem including work performance and DUI/DWI arrests.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Notify the EAP Case Manager of any tests completed with positive results and any alcohol tests with a result of 0.02 or greater or other concerns related to the employee's drug or alcohol problem including work performance and DUI/DWI arrests.
Employee	<ul style="list-style-type: none"> • Remain compliant with any continuing treatment or education requirements made by the EAP Counselors/SAP during the follow-up evaluation. • Maintain required contact with the EAP Case Manager, the aftercare team when transferred and any other treatment providers required by the EAP Counselors/SAP.

The Substance Abuse Program Staff of HRD will continue to monitor the referral for compliance and all required follow-up testing.

Completion of Treatment

Employees who are mandatorily referred to the EAP will be terminated from the department if they fail to complete treatment.

If the employee has met all requirements under his or her mandatory referral the employee will have completed treatment. The following table outlines this process:

Completion of Treatment	
Who	Action
EAP Case Manager	Verify follow-up testing is completed and no tests are awaiting results, and all aftercare treatment requirements, including treatment required by the SAP, have been completed with the Substance Abuse Program Staff of HRD and the SCO.
Substance Abuse Program Staff of HRD	Verify that there are no tests awaiting results with the SCO.
EAP Case Manager	Provide the completion of treatment letter to the Substance Abuse Program Staff of HRD and SCO.
SCO or Supervisor	Advise the employee that: <ul style="list-style-type: none"> • they have completed all treatment requirements, and • any additional violations of the Substance Abuse Program Rules that require a second referral will result in termination.

Temporary Modified Duty

If the employee is able to work while in treatment, the department may assign non-critical duties, if available.

Employees must accept available temporary modified duty unless they are eligible for Family and Medical Leave (FML). Employees who refuse temporary modified duty will be subject to disciplinary action, up to and including termination. Temporary modified duty, if available, must be applied consistently for all employees.

See the *Human Resources Policy Manual* for more information concerning FML or temporary modified duties.

If temporary modified duty is available, but the employee refuses the temporary modified duty assignment because they are eligible for FML, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

If temporary modified duty is not available, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

Mandatory Referral Limit

Employees are limited to one mandatory referral to the EAP for substance abuse violations. Therefore, employees who need to be mandatorily referred for a second substance abuse violation, including **rehired department employees**, will be terminated with the following exceptions:

- ◆ Employees who received and completed two mandatory referrals prior to January 1, 1999, will be terminated if they require a third mandatory referral.
- ◆ Employees who received and completed one mandatory referral prior to January 1, 1999, will be mandatorily referred for a second time, if necessary, and will be terminated if they require a third mandatory referral.

The following referrals will not count toward the mandatory referral limit of one:

- ◆ Employees assessed as not needing assistance with problems associated with an alcohol or drug abuse problem on his or her first mandatory referral, and
- ◆ Employees who are mandatorily referred for an alcohol- or drug-related driving offense. (Employees who receive two alcohol- or drug-related driving offenses within a ten-year period are terminated.)

Terminations

A commercial driver will be terminated if they:

- ◆ refuse to take a required drug or alcohol test, or
- ◆ fail to comply with a mandatory referral or to complete treatment, including aftercare, or
- ◆ test positive on any type of test while in treatment, including return-to-duty or follow-up tests, or
- ◆ violate any other prohibition found in the Substance Abuse Program Rules that results in termination.

Form [2472](#), “Notification of Access to Substance Abuse Professionals (SAPs)” will be provided to the employee at termination so they will have access, through the EAP’s toll-free number, to a list of SAPs who can help them complete the federally mandated treatment requirements.

A conditionally hired commercial driver may not perform duties as a safety-impact employee and will be terminated if the pre-employment inquiry indicates that the employee has had a previous positive drug or alcohol test, refusal to test, or other violation of US DOT agency drug and alcohol testing regulations, without having completed the required substance abuse treatment.

§ 4 – Pre-Employment & Certification

Job Requisition (JR) Statements

Commercial Driver or Commercial Driver and Safety-Impact Position

When a job offer (JO) is posted for a commercial driver only position, or a commercial driver and safety-impact position, the JO should contain the statements concerning the commercial driver license with endorsements, pre-employment drug test and that commercial drivers are subject to additional drug and alcohol testing.

Special Provisions

When a JO is posted for a commercial driver only position or a commercial driver and safety-impact position, and a provision is made to allow the final applicant 60 or 90 days after the date of employment to obtain a commercial driver's license, the JO should contain the statement concerning obtaining the commercial driver license with endorsements with (60-90) days, pre-employment drug test and that commercial drivers are subject to additional drug and alcohol testing.

Note: This will cover the employee during the 60 or 90 day time period when they will not be subject to post-accident and random drug and alcohol testing as a commercial driver but will be subject to post-accident and reasonable cause testing as a safety-impact employee.

Testing Requirements

External final applicants for commercial driver positions must pass a pre-employment drug test. A statement informing applicants of the department's intent to conduct drug tests should appear under "Conditions of Employment" of the job offer (JO) for commercial driver positions. If the drug testing statement was excluded from the JO, the external final applicant needs to be informed by the hiring supervisor that they will still be required to take a pre-employment drug test and will be subject to testing once hired. Applicants who fail to pass the test will be sent Form [2472](#), "Notification of Access to Substance Abuse Professionals (SAPs)."

Current employees who are final applicants for commercial driver positions, including transfers, promotions, and employees who undergo cross training, will be subject to pre-employment drug testing. This does not include career ladder promotions unless the employee is being promoted from a non-commercial driver position to a commercial driver position. Current employees who fail to pass a pre-employment drug test will not be hired, transferred or promoted to that position and will be mandatorily referred to the EAP and required to complete treatment.

Testing Procedures

The following table provides the steps for testing procedures:

Pre-Employment Testing Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Advise interviewees of the department’s substance abuse policy and drug and alcohol testing procedures. • If the applicant requests the test results in writing, notify him or her to complete Form 2471, “Applicant or Employee Request for Drug or Alcohol Test Results.” • Inform the applicant that they must pass a physical exam, including a drug test, prior to becoming employed with the department. • Inform the applicant: <ul style="list-style-type: none"> • they are subject to a pre-employment inquiry, and • they must pick up their Form 484, “Job Analysis and Physical Exam Record” and Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” the next day. Make sure drug test requirement is checked off on the Form 484, “Job Analysis and Physical Exam Record.” • When the applicant comes to pick up their forms: <ul style="list-style-type: none"> • have them sign all pre-employment inquiry forms (1940 and 1944) • provide to the final applicant a Federal Drug Testing Custody and Control Form • inform the applicant of collection sites (In most cases, an applicant will only have to go to one location for his or her physical exam and drug test.) • make an appointment with the clinic to have the services performed within five days • advise the applicant to take photo identification, and • inform the applicant they will not be allowed to begin work until they have a negative drug test result. • Notify the SCO of the applicant’s name and social security number.
SCO or HRO	<ul style="list-style-type: none"> • Fax the completed Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” to the Occupational Safety Division Substance Abuse Office the day of the test. • Note on the authorization form whether or not the employee is getting a pre-employment physical exam as well.
MRO	<ul style="list-style-type: none"> • Notify the SCO of the drug test result using the notification system.
SCO	<ul style="list-style-type: none"> • Notify the supervisor of the drug test result.
Supervisor	<ul style="list-style-type: none"> • Notify the applicant whether or not the department, after receiving the results of the drug test and the pre-employment physical exam, will hire him or her. • If the applicant requests the test results in writing, notify him or her of the results of their pre-employment drug test, including the names of the drugs verified as positive, if applicable.
SCO or HRO	<ul style="list-style-type: none"> • For positive pre-employment test results, mail Form 2472, “Notification of Access to Substance Abuse Professionals (SAPs)” to the applicant so they will have access, through the EAP’s toll-free number, to a list of SAPs who can help them complete the federally mandated treatment requirements. • Provide a copy of the form to the Substance Abuse Program Staff of HRD. • Keep a copy of the form for documentation purposes.

An applicant will not begin work for the department until they have passed their physical exam and have a negative pre-employment drug test result.

Current employees who have a positive pre-employment drug test result will not be hired, transferred, or promoted to that position. In addition, the employee will be mandatorily referred to the EAP.

Inquiries

Overview

Final applicants for commercial driver positions are required to sign Form [1940](#), “Conditional Offer of Employment for Commercial Drivers and Vessel Crewmembers,” upon hire, acknowledging that the offer will be rescinded if the department receives information of previous drug and alcohol violations, without the driver receiving the required substance abuse treatment. Final applicants are required to indicate on this form whether or not they have (1) tested positive on, or refused to take, a pre-employment test for an employer in the two years preceding the date of application, and as a result were not hired for a US DOT-regulated position, (2) for those who have tested positive or refused to test, whether they have completed all required assessment and treatment requirements pursuant to 49 CFR Sec. 382.605 and Sec. 40.25, and (3) whether they have performed commercial driver duties for an employer during the two years preceding the date of application.

Federal regulations also require that prospective employers request prior drug and alcohol testing information from the previous employers of all external final applicants for commercial driver positions, if the applicants performed commercial driver duties for them during the two years prior to the date of application with the department. Only the following information is requested:

- ◆ Alcohol test results of 0.04 or higher alcohol concentration
- ◆ Verified positive drug test results
- ◆ Refusals to be tested (including verified adulterated or substituted tests)
- ◆ Other violations of US DOT agency drug and alcohol testing regulations, and
- ◆ Drug and alcohol information obtained from previous employers by previous employers.

Inquiry Procedures

The Pre-Employment Inquiry Procedures below describe in more detail the process for obtaining the required pre-employment inquiry information from applicants, previous employers, and SAPs. Although prior testing information is being requested from previous employers and final applicants, the department still requires that all final applicants for commercial driver, safety-impact, and vessel crewmember positions undergo pre-employment drug testing as described in the Pre-Employment Testing sections of the Substance Abuse Program Manual.

HROs, SCOs, and supervisors should follow the procedures below when requesting prior drug and alcohol testing information.

Pre-Employment Inquiry Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Select the final applicant. • Make a conditional offer of employment to the final applicant. • When applicant picks up their pre-employment physical and drug testing forms, have the applicant complete and sign Form 1940, “Conditional Offer of Employment for Commercial Drivers and Vessel Crewmembers.” <p>Note: Since different procedures are to be followed for different answers to each of the questions in Part A, it is recommended that you merely follow the instructions on the form to complete the process. If the final applicant does not sign Form 1940, they will not be conditionally hired.</p> <ul style="list-style-type: none"> • If the applicant answers “Yes” to Question 3 on Form 1940, indicating that they have performed commercial driver duties for an employer in the preceding two years: <ul style="list-style-type: none"> • Conditionally hired employee must complete Form 1944, “Request/Consent Form for Release of Alcohol/Controlled Substances Testing Records,” for each applicable previous employer for the past two years. • Forward the form(s) to his or her HRO or SCO.
HRO or SCO	<ul style="list-style-type: none"> • Send by fax or mail Form 1944, “Request/Consent Form for Release of Alcohol/Controlled Substances Testing Records,” to previous employers for the past two years. • Follow-up with previous employers in 14 days, by phone, to check the status of the information request. • Review the information from the previous employer(s) to determine whether prior violations exist. If so, contact the conditionally hired employee and have him or her sign Form 1945, “Records Release Form for Substance Abuse Professionals for Evaluation/Treatment Records” which will be sent to the SAP. • Send Form 1945, “Records Release Form for Substance Abuse Professionals for Evaluation/Treatment Records,” to obtain information on the individual’s compliance with treatment requirements. <p>Caution: IF those conditionally hired employees who previously violated a US DOT agency drug or alcohol testing regulation were either not assessed by a SAP, did not comply with his or her treatment requirements, THEN they will not be hired by the department. IF the individual has already started working for the department, THEN they will be terminated. These employees should also be given Form 2472, “Notification of Access to Substance Abuse Professionals (SAPs),” so they will have access, through the EAP’s toll-free number, to a list of SAPs who can help them complete the federally mandated treatment requirements.</p> <ul style="list-style-type: none"> • Notify the Substance Abuse Program Staff of HRD of any reports that indicate a positive drug or alcohol test, a refusal to test, or any other violation of US DOT agency drug and alcohol testing regulations. • Notify the supervisor of the information received and discuss the action which should be taken. <p>Note: If the required information is not available from a previous employer and the SCO/HRO has made a good faith effort to obtain the information, the SCO/HRO will document his or her efforts to obtain the required information and advise the supervisor to continue to allow the conditionally hired employee to work. Report previous employers who refuse to release the requested information to the Substance Abuse Program Staff of HRD who will report this information to US DOT. The company name, contact person, addresses, and phone number of these employers may be submitted by e-mail or by memo.</p>

Final Applicants

A final applicant will not be hired if they:

- ◆ do not report for pre-employment testing,
- ◆ are unable to provide a urine specimen, and do not provide documentation of a medical condition,
- ◆ have a positive pre-employment drug test result,
- ◆ have a pre-employment inquiry indicating that the employee has had a previous positive drug or alcohol test result, a refusal to test, or other US DOT violation without having completed the required substance abuse treatment, or
- ◆ do not sign Form [1940](#), “Conditional Offer of Employment for Commercial Drivers and Vessel Crewmembers.”

If a final applicant appears to have refused to test, please call the Substance Abuse Program Staff of HRD.

Commercial Driver Certification Procedures

Form [1878](#), “Commercial Driver Certification” must be completed by all new and current employees who are hired, transferred or promoted to a position which requires a Commercial Driver’s License (CDL). Employees who are given 60 or 90 days to obtain their commercial driver’s license should not be certified or provided Form [2463](#), “Commercial Driver Notification and Receipt of Materials” until they receive the commercial driver permit.

The following table shows steps to take to certify a commercial driver:

Commercial Driver Certification Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Provide a Commercial Driver Employee Information Packet to all commercial driver employees upon their date of hire. This packet will contain policy information. • Review the material in this packet with the commercial driver employee. • After reviewing the material in the Commercial Driver Employee Information Packet, have the employee sign Form 1878, “Commercial Driver Certification,” and Form 2463, “Commercial Driver Notification and Receipt of Materials.” • Make a copy of both forms for the employee. • Send both forms to the SCO. These forms serve as notification to the employee that they are subject to testing as a commercial driver and provide proof of mandatory substance abuse training for commercial drivers.
SCO	<ul style="list-style-type: none"> • Fax or mail the completed Commercial Driver Certification and the Commercial Driver Notification and Receipt of Materials form to the Substance Abuse Program Staff of HRD as soon as they are completed by the employee and prior to any drug or alcohol testing. • Make an additional copy of the Commercial Driver Notification and Receipt of Materials and submit to the training coordinator for input into the employee’s training history. <p>Note: Any commercial driver employee who refuses to sign the Commercial Driver Certification form or the Commercial Driver Notification and Receipt of Materials form will be terminated.</p>

§ 5 – Post-Accident Testing

Treat Injuries First

Treat injuries first. The physical health of injured individuals is always a higher priority than drug and alcohol testing. Administer first aid as needed and ensure that injured individuals receive prompt medical treatment. Nothing in the federal regulations or this document is intended to delay necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident to obtain assistance or necessary medical care.

Testing Criteria

A drug test *and* an alcohol test will be administered to a commercial driver who is performing any duties involving a commercial motor vehicle that result in a serious accident or injury and meets one of the criteria on Form [2475](#), “Post-Accident Determination Checklist.”

A drug test *and* an alcohol test will be administered to a commercial driver who is performing any duties involving a commercial motor vehicle and the driver is “directly involved” in the accident.

For an employee to be ruled as “directly involved” in a serious accident or injury, the employee’s order, action or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing that accident. More than one employee could be directly involved in any accident.

Form [2475](#), “Post-Accident Determination Checklist,” lists all criteria and should be used to determine if the employee should be post-accident tested.

Reasonable Cause

If the supervisor or SCO reasonably suspect the employee of being under the influence of drugs or alcohol at the time of the accident, and the employee meets the requirements for reasonable cause testing with documented indicators (with the exception of a previous warning), then a post-accident test should be conducted, regardless of whether the accident meets the criteria for post-accident testing. SCOs must contact the Substance Abuse Program Staff of HRD for authorization prior to testing.

If it is determined the employee was not performing duties as a commercial driver or safety-impact employee, refer to Chapter 2, All Department Employees, Reasonable Cause and review Form [2551](#), “Indicators of Serious Accident or Injury” to determine if reasonable cause testing is warranted.

Testing Procedures

The procedures outlined in the following table should be used to determine whether a commercial driver should be post-accident tested.

Post-Accident Testing Procedures	
Who	Action
Commercial Driver	<ul style="list-style-type: none"> • Immediately notify his or her supervisor of any vehicular accident or personal injury involving a commercial driver and a commercial motor vehicle. <p>Note: If the immediate supervisor of a commercial driver involved in an accident is not available, then any supervisor may assist the SCO in making the testing determination at the scene of an accident, as long as the supervisor has been trained on post-accident testing.</p>
Supervisor	<ul style="list-style-type: none"> • Immediately contact the SCO by phone when any accident or injury occurs that involves a commercial driver to see if the accident or injury meets the criteria for testing. Together you will determine if the employee should be tested by completing Form 2475, “Post-Accident Determination Checklist.” When determining if the circumstances meet the criteria, answer the questions, in order, on the form. • Document when you spoke with the SCO. • Complete the Post-Accident Determination Checklist and send an initialed copy of it to the SCO as soon as possible after the telephone contact. • Remind commercial drivers who are subject to drug and alcohol testing that they must remain readily available for such testing after an accident. In addition, any commercial driver subject to a post-accident test must not consume alcohol for eight hours after the accident or until after an alcohol test is administered. <p>Note: Supervisors should carry Federal Drug Testing Custody and Control Forms, Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” and Post-Accident Determination Checklists secured in their vehicles to facilitate timely testing of employees who have accidents.</p>
SCO	<ul style="list-style-type: none"> • Discuss the circumstances of the accident by phone with the supervisor. • Determine if the circumstances meet the criteria found on the Post-Accident Determination Checklist. When determining if the circumstances meet the criteria, answer the questions, in order, on the form. If you are unsure whether the accident fits the criteria for post-accident testing, call the Substance Abuse Program Staff of HRD. • Give verbal approval to the supervisor to test the commercial driver. • Document when verbal approval is given. • Sign the Form 2475, “Post-Accident Determination Checklist” once received from the supervisor. • Contact the appropriate DE/DD or applicable member of the Administration to advise them of the accident and that a commercial driver has been tested. • Gather all documentation related to the accident. Federal regulations require documentation of any accident that fits the criteria for a post-accident test which includes documentation on all tests administered as well as tests that should have been administered but were not due to extenuating circumstances (i.e., collection sites closed, time limits expired, etc.). • Fax the Form 2475, Post-Accident Determination Checklist, to the Substance Abuse Program Staff of HRD, along with a copy of the TxDOT Vehicular Accident Report or the Employer’s First Report Of Injury Or Illness form and other documentation. • Fax the completed Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” to the Occupational Safety Division Substance Abuse Office the day of the test. • Notify the Substance Abuse Program Staff of HRD when a test is administered and who was tested. <p>Note: The Post-Accident Determination Checklist must be completed with all initials within 24 hours after the accident. However, the form does not have to be completed before the employee is tested. All documentation related to making a determination to test must be attached to the Checklist.</p>

Testing Time Limits

Commercial drivers that are given post-accident tests are allowed to continue their work duties even though the results of the drug tests are not yet available UNLESS there is reason to believe that they are under the influence at the time of the accident.

Alcohol and drug tests must be administered within the specified time period for accidents and injuries:

- ◆ **Alcohol** tests shall be administered within two hours of the accident or injury. If not administered within two hours, continue to try and administer a test for up to eight hours. No alcohol test will be administered after eight hours have passed.
- ◆ **Drug** tests must be administered within 32 hours of the accident or injury. No drug test will be administered after 32 hours have passed.
- ◆ **Note:** If the 2-hour, 8-hour or 32-hour deadlines are not met, the reason(s) must be documented on Form [2475](#), “Post-Accident Determination Checklist.”

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

Law Enforcement

If law enforcement is involved, cooperate and allow local law enforcement authorities to conduct their investigation. The police may require tests to determine if the employee is under the influence of drugs or alcohol. If so, request that the results of the test be released to the department. Always get the officer’s name, badge number, and phone number, so that a written copy of the officer’s report may be obtained at a later date.

Document the fact that law enforcement administered a drug and/or alcohol test and that we used that test result on Form [2475](#), “Post-Accident Determination Checklist.” If law enforcement is only testing for drugs or alcohol, but not both, continue to administer the remaining test. If you are not able to administer a test, document the reason why.

TxDOT cannot request that a blood test be administered for any reason. However, the results of a breath or blood test, for the use of alcohol, conducted by the Federal, State, or local officials will be accepted by the department provided they conform to applicable testing requirements. In addition, results of a urine test for the use of drugs, conducted by Federal, State, or local officials will be accepted by the department provided they conform to applicable testing requirements.

Hospitals

If an employee is admitted to a hospital, check to see if DPS has ordered any drug or alcohol testing. Otherwise, you may order drug and alcohol tests after the employee's release, if it is within the testing time limits for drug and alcohol testing. The treating physician should also determine if the employee is able to be transported to be tested without further injury.

In an emergency situation, when no collection site is available, SCOs or supervisors may request that a hospital collect a drug urine specimen. The urine sample should be sent to the department designated lab. Therefore, it is essential for the SCOs to furnish the hospital with our Federal Drug Testing Custody and Control Form and Form [2007](#), "Authorization for Physical Urine Drug Screen and Breath Alcohol Test" to ensure that urine specimens are sent to the correct lab.

Critical Incident Stress Debriefings

To help co-workers who are affected by deaths or serious injuries of employees who are involved in accidents, Critical Incident Stress Debriefing (CISD) sessions may be conducted by Alliance Work Partners, our Employee Assistance Program vendor. These sessions are group meetings designed to assist employees in minimizing the stressful effects of trauma. Alliance's professionally trained counselors will help employees express their feelings, understand the traumatic incident, and help them recognize many of the common reactions to trauma. They will also teach survival skills for managing post-trauma stresses. These debriefings typically occur within 24 to 72 hours of the incident and last 30 minutes to an hour, or longer, depending on the circumstances.

If a critical incident occurs and you would like to schedule a Critical Incident Stress Debriefing (CISD) session for your employees, please call the Human Resources Division Wellness Program Staff at 512-486-5358 or 512-486-5435.

§ 6 – Reasonable Cause Testing

Overview

An employee who is reasonably suspected of working under the influence of drugs or alcohol, or who has a severe incident while driving for the department or severe injury, will be required to undergo a drug or alcohol test.

The decision to test must be based on a reasonable belief by a supervisor or SCO who has been trained on the signs and symptoms of drug or alcohol use, that the employee is suspected of working under the influence. The belief must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance indicators of probable use. The observations of physical, behavioral, or performance indicators of probable use may include indications of the chronic use and withdrawal effects of drugs.

Making a reasonable cause determination also requires some evidence of probable linkage between behavior or events and drug or alcohol use on the job or the performance of duties under the influence of drugs or alcohol. The supervisor should show that there are objective facts pointing to drug or alcohol affected behavior which cause a work-related problem.

Physical or behavioral signs and symptoms of drug or alcohol use which cause a work-related problem may be caused by reasons other than drug or alcohol use. For example, poor coordination may be caused by exhaustion due to a lack of sleep. A believable explanation may eliminate the suspicion of drug or alcohol use, but it does not eliminate the need for disciplinary action for a work-related problem. Tell the employee of the observations and facts that formed the basis of the conclusion that the employee is working under the influence of drugs or alcohol and ask the employee for an explanation of the signs and symptoms.

Reports from Co-Workers or Other Witnesses

If co-workers or other witnesses report a specific event or behavior, the supervisor should ask them to describe exactly what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was drug or alcohol related? On what basis did they reach their conclusion?

SCOs or supervisors should validate all co-worker concerns through closer observation of the employee. It may also be appropriate to discuss the concerns with the employee. However, the names of witnesses should not be given to the employee. Be sure to document all concerns and discussions with employees and co-workers.

SCOs or supervisors can consider co-worker concerns and should call the Substance Abuse Program Staff of HRD to discuss these concerns. If the supervisor or SCO validates co-worker concerns, follow the Reasonable Cause Testing Determination Procedures.

Reasonable Cause Testing Determination Procedures

Reasonable Cause Testing WILL NOT be conducted UNLESS:

- ◆ the decision to test is made by a supervisor who has been trained on the signs and symptoms of drug and alcohol use and on department policy and procedures, and
- ◆ the supervisor documents physical or behavioral indicators of drug or alcohol use and any related work performance problems, and
- ◆ the SCO concurs with the supervisor’s recommendation to send for a reasonable cause test, and
- ◆ the testing has been authorized by the Substance Abuse Program Staff of HRD, and
- ◆ the testing has been approved by the DE/DD or designee or applicable member of the Administration.

Refer to Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” Form [2470](#), “Indicators of Work Performance Problems,” and Form [2467](#), “Reasonable Cause Determination Checklist.” Refer also to the [Appendix](#) for additional information on Reasonable Cause.

The **supervisor** should follow these procedures to determine whether there is reasonable cause to test an employee for alcohol or drugs:

Reasonable Cause Testing Determination Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Observe the employee’s behavior if there is reason to believe that the employee may be working under the influence of drugs or alcohol. • Complete Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist,” • Contact the SCO for guidance, if necessary, and • Discuss your observations with the employee in an attempt to discover non-substance abuse related reasons for the behavior, symptom, or event. A believable explanation may eliminate the suspicion of drug or alcohol use, but it does not eliminate the need for disciplinary action for a work-related problem.

When confronting employees about suspected substance abuse, denial should be an expected reaction. The employee may give many explanations and protests to avoid a drug or alcohol test or a mandatory referral. In these situations, state that you neither believe nor disbelieve the employee, that a request for a urine or breath specimen is not an accusation, but rather a request for additional objective data to put any suspicions to rest.

Possible Outcomes from the Discussion with the Employee

IF it is discovered that the employee’s performance is impaired due to the use of prescription drugs or over-the-counter substance,

THEN remove the employee from work duties as described in the [Unable to Perform Duties Safely](#) section of this chapter.

IF the employee voluntarily admits to having a drug or alcohol problem or using in the workplace,
THEN follow the procedures in the Admitting to Drug/Alcohol Problem or Use in the Workplace section.

IF you do not have enough indicators and documentation that the employee is working under the influence,

THEN continue to observe the employee, document any observations, and warn the employee that if it is subsequently discovered that they are working under the influence, they will be subject to administrative or disciplinary action, up to and including termination.

IF you do have enough indicators and documentation that the employee is working under the influence,

THEN continue following the procedures below for reasonable cause testing.

- ◆ Immediately contact the SCO by phone if you suspect that an employee is working under the influence of drugs or alcohol. Discuss your observations with the SCO and the results of the discussion that you had with the employee. Document your conversation with the SCO.
- ◆ Fax an initialed copy of Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” Form [2470](#), “Indicators of Work Performance Problems,” and Form [2467](#), “Reasonable Cause Determination Checklist” to the SCO as soon as possible after the telephone contact.

When a reasonable cause testing decision is pending and the employee is a real and present danger to personal safety or property, the supervisor is responsible for removing the employee from critical duties. The employee will be reassigned to other duties or required to take his or her own accrued leave until 1) the employee is taken for a reasonable cause test and the results are reported, or 2) 24 hours have passed following the determination that the employee is working under the influence of drugs or alcohol.

The following are procedures for reasonable cause testing:

Reasonable Cause Testing Determination Procedures	
Who	Action
SCO	<ul style="list-style-type: none"> • Discuss with the supervisor the employee’s behavior and the information from the discussion between the supervisor and the employee. • Discuss with the employee, if appropriate. • Call the Substance Abuse Program Staff of HRD to determine whether there is enough justification and documentation to test the employee based on Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist.”
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Review the SCO’s and supervisor’s recommendation and all available documentation. • Determine whether there is enough justification and documentation to test the employee based on Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist,” and any other information. • Determine whether or not the employee should be tested for drugs, alcohol or both. • Authorize reasonable cause testing, if appropriate.
SCO	<ul style="list-style-type: none"> • Immediately contact the appropriate DE/DD or applicable member of the Administration, discuss the observations and your recommendations and the recommendations of the Substance Abuse Program Staff of HRD. • Submit Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist” to him or her as soon as possible after the telephone contact.
DE/DD, Applicable Member of the Administration or Designee	<ul style="list-style-type: none"> • Review the recommendations of the supervisor, SCO and Substance Abuse Program Staff of HRD and the available information. • Verbally approve or deny the recommendation to test.
SCO	<ul style="list-style-type: none"> • Upon the decision to test, the employee must be removed from critical duties until the test results are reported by the MRO. • Document when verbal approval is given by DE/DD or applicable member of the Administration for a reasonable cause test. • Contact the supervisor when the DE/DD or applicable member of the Administration gives verbal approval. Be sure to tell the supervisor whether the employee will be tested for drugs, alcohol or both. • Prepare and fax to the supervisor or clinic Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” Contact the clinic to ensure they are aware of the reasonable cause test request. • Initial the “Reasonable Cause Determination Checklist” once received from the supervisor. • Forward the original “Reasonable Cause Determination Checklist” to the appropriate DE/DD or applicable member of the Administration for their initials. • Fax or email a copy of Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist” to the Substance Abuse Program Staff of HRD for initials and retention.

Note: Form 2467, “Reasonable Cause Determination Checklist,” must be completed with all initials within 24 hours after the incident. All documentation related to making a determination to test must be attached to the Checklist, all of which should be submitted to the Substance Abuse Program Staff of HRD.

Testing Time Limits

Reasonable cause testing for alcohol and drugs must be administered within the specified time periods:

- ◆ **Alcohol** tests shall be administered within two hours of the testing determination. If not administered within the two hours, continue to try and administer a test for up to eight hours. No alcohol test will be administered after eight hours have passed.
- ◆ **Drug** tests must be administered within 32 hours of the testing determination. No drug test will be administered after 32 hours have passed.
- ◆ **Note:** If the 2-hour, 8-hour or 32-hour deadlines are not met, the reason(s) must be documented on Form [2467](#), “Reasonable Cause Determination Checklist.”

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

All reasonable cause testing decisions must be authorized by the Substance Abuse Program Staff of HRD and approved by the DE/DD or applicable member of the Administration, or designee not below the level of Deputy DE, Deputy DD, or Business Services Coordinator prior to administering a reasonable cause test.

§ 7 – Random Testing

Overview

Commercial drivers will be selected for testing on a random basis in a manner to ensure that each driver has a substantially equal chance of selection on a scientifically valid basis. The testing frequency and selection process will be such that a commercial driver's chance of selection continues to exist throughout his or her employment as a commercial driver. An outside vendor is used to generate the random selections.

At least 10% of commercial drivers will be tested annually for alcohol and at least 50% for drugs. Each time random selections are made, they are made from a list which contains all TxDOT department ID numbers where commercial drivers are assigned. Therefore, every employee who is certified to be randomly tested is on the list, under his or her department ID number, every time a selection is made.

Every designated employee on the original random testing list that was absent the day the random testing was conducted will be tested if they return to work during the monthly testing cycle. Upon the return to work, the employee must be sent to a testing facility that is capable of performing the required tests. A supervisor, lead worker, or project leader need only transport the employee to the test site if the employee has previously tested positive or if there is any other reason to suspect a problem with the employee transporting themselves.

Random Testing Procedures

The following procedures should be used when random testing is to be conducted:

Random Testing Procedures	
Who	Action
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Toward the end of each month, send to the collection vendor the lists of commercial drivers to be random tested the following month. • Send the same lists of commercial drivers to be random tested to the SCOs.
SCO	<ul style="list-style-type: none"> • Verify the random testing lists of commercial drivers. • Notify the Substance Abuse Program Staff of HRD of any discrepancies. • Provide information to Substance Abuse Program Staff to add or change information on random testing list. • Coordinate with the collection vendor for the collection site location and date and time of testing.
Collection Vendor	<ul style="list-style-type: none"> • Coordinate with the SCOs: <ul style="list-style-type: none"> • whether the tests will be for drugs only or both drugs and alcohol, • the collection site location(s), and • the date and time of the test.
SCO	<ul style="list-style-type: none"> • Notify supervisors by phone the afternoon before the test date of: <ul style="list-style-type: none"> • the date of the test, • the names of employees subject to testing (employees will be sent to a collection site as soon as they report to work, unless the collections will be done on-site), • attend the random testing, • whether the tests will be for drugs only or both drugs and alcohol, and • the collection site location. • Notify the next level supervisor if the immediate supervisor is included in the testing or there are other issues. <p>Note: A random test cannot be substituted for an employee’s required return-to-duty or follow-up test.</p>
Supervisor	<ul style="list-style-type: none"> • Notify employees the morning of the test date: <ul style="list-style-type: none"> • that they will be tested that day, • whether the tests will be for drugs only or both drugs and alcohol, • of the collection site location, and • that they must take photo identification to the collection site. • Notify the SCO of employees who were sent for testing.
Commercial Driver	<ul style="list-style-type: none"> • Report directly to the collection site and return directly to work as soon as collections are completed.

Random Testing Procedures	
Who	Action
SCO (for on-site collections)	<ul style="list-style-type: none"> • Ensure that employees are not permitted to leave the room or have access to telephones once they have reported to the collection site for testing. • Verify that all employees on the list are tested. • Note the reason the employee is not tested on the testing list. • Initial the verified amount of employees tested. • Obtain enough Custody and Control forms from the collector to conduct testing for each employee not tested. • Coordinate with the supervisor and annotate next to each name the date the employee will return to the workplace. Absent employee must be tested within the month of the original random testing list. • Fax: <ul style="list-style-type: none"> • Copy 2 of the Custody and Control Form and the revised random test list to the MRO’s office; • Copy 4 of the Custody and Control Form, the Alcohol Test Forms and a copy of the revised random test list to the Substance Abuse Program Staff of HRD; • copy of the revised random test list to Occupational Safety Division. • Provide a copy of the revised random test list to the collector. • Mail original testing documents to the appropriate recipients.
SCO (for clinic collections)	<ul style="list-style-type: none"> • Coordinate in advance with the closest collection facility to conduct the required testing on the date indicated for each employee. Ensure each employee will receive the same required testing. • Prepare Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” for each employee to be tested at a clinic collection site. • On the day each employee will be sent to the clinic, fax the Authorization form to OCC. • The collection site is responsible for faxing and mailing the test forms to the MRO and OCC.

Adding to the Random Testing List

Note: *Employees can only be added to the random testing list prior to or on the date of the actual random test.*

The following procedures should be followed when it is necessary to add a commercial driver to the random testing list:

Action
<ul style="list-style-type: none"> • Call the Substance Abuse Program Staff of HRD to see if Form 1878, “Commercial Driver Certification” and Form 2463, “Commercial Driver Notification and Receipt of Materials” for the employee who needs to be added to the testing list are on file with HRD.
<ul style="list-style-type: none"> • If the Commercial Driver Certification is not on file with HRD, fax the completed certification and Commercial Driver Notification and Receipt of Materials to the Substance Abuse Program Staff of HRD as soon as possible.
<ul style="list-style-type: none"> • Once the forms have been received by HRD, the Substance Abuse Program Staff will approve the addition of the employee to the list and the testing of that employee with the rest of the drivers in that section. You will be instructed to write the certified employee’s name and employee ID on the testing list.
<ul style="list-style-type: none"> • If you are unable to submit the Commercial Driver Certification form to the Substance Abuse Program Staff of HRD prior to the completion of random testing for that section, DO NOT have the employee random tested. Submit Form 1878, “Commercial Driver Certification” and Form 2463, “Commercial Driver Notification and Receipt of Materials” as soon as possible.

Excusing a Commercial Driver from Random Testing

An employee must not be excused from the random testing without a valid reason. The only reasons an employee should be excused from random testing list are:

- ◆ the employee is in initial treatment of a mandatory referral;
- ◆ the employee has transferred to another section;
- ◆ the employee no longer qualifies or performs duties as a commercial driver for the department;
- ◆ the employee is no longer employed by the department; or
- ◆ the employee will not return to work during the month the original random test was conducted.

If a commercial driver reports to work and then feels ill or has a medical emergency and has to leave work after the testing has begun, make every effort to have the employee tested before they leave. The collection vendor will give employees who are ill or have an emergency priority for testing. If this is not possible, the employee should be tested as soon as they return to work.

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

Discussing Test Results

Discussions with employees and supervisors about random test results should be done privately. It is not appropriate for anyone to discuss test results with a group, i.e. “We only had one positive the last time out of this group,” especially since this employee may be identified by co-workers. This is a serious breach of confidentiality and may result in disciplinary action being taken against the employee who shared the information.

Any designee who tells drivers about random testing prior to random testing dates will be subject to disciplinary action, up to and including termination.

§ 8 – Alcohol and Drug Tests

Overview

The alcohol and drug testing procedures outlined in this section should be followed when an employee must undergo drug or alcohol testing as required in the Substance Abuse Program Rules.

Alcohol Tests

The following procedures should be used to process alcohol testing and what actions to take with a positive test result.

Testing Process	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Fill out Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” The Breath Alcohol Technician will provide the employee with a U.S. Department of Transportation (DOT) Alcohol Testing Form at the time of the test. • Transport/send the employee to a collection site and wait for the results of the alcohol test. • Fax a copy of the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.

If Test Results Are 0.02 or Greater, but Less Than 0.04	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Inform the employee that they will have to take their own sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until 24 hours have passed. • Make every effort to ensure that the employee does not drive home. Offer to drive the employee home or to contact someone to pick him or her up at the collection site. • Notify the SCO or supervisor of the test result and the actions you took. • Return the employee to their normal duties after 24 hours have passed from the time the employee was tested.
Collection Site	<ul style="list-style-type: none"> • Fax the test results to the employer.

If Test Results Are 0.04 or Greater	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Inform the employee that they will have to take their own sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until 24 hours have passed. • Make every effort to ensure that the employee does not drive home. Offer to drive the employee home or to contact someone to pick him or her up at the collection site. • Notify the SCO or supervisor of the test result and the actions you took. • Immediately remove the employee from critical duties. • Mandatorily refer the employee to the EAP when they report to work after 24 hours have passed. (See the Mandatory Referrals section of this chapter)
Collection Site	<ul style="list-style-type: none"> • Fax the test results to the employer.

Drug Tests

The following procedures should be used to process drug testing and what actions to take with a positive test result:

Drug Tests	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Fill out Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” • Take a Federal Drug Testing Custody and Control Form with you. • Send/transport the employee to a collection site. • Fax the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.
Collection Site Personnel	<ul style="list-style-type: none"> • Fax Copy 2 of the Custody and Control Form to the MRO’s office; Copy 4 of the Custody and Control Form to the employer.
MRO	<ul style="list-style-type: none"> • Notify the Substance Abuse Program Staff of HRD and the SCO of positive drug test results in writing and negative results for all test types.
SCO	<ul style="list-style-type: none"> • Notify the employee’s supervisor of the drug test result.
Supervisor	<ul style="list-style-type: none"> • Notify the employee of the drug test result. • For positive test results: <ul style="list-style-type: none"> • Immediately remove the employee from critical duties. • Mandatorily refer the employee to the EAP. (See the Mandatory Referrals section of this chapter.)

SCOs can check the drug test notification system for test results. If the drug test results are not available after three days, please contact the Substance Abuse Program Staff of HRD.

Negative Dilute Drug Test Results

Overview

If a drug test has a negative dilute test result, the employee or final applicant will be directed to take another test.

The second drug test must NOT be collected under direct observation, unless there is another basis for the use of direct observation. Direct observation will only be decided by collection site personnel.

The result of the second drug test becomes the test of record. If the second test has the same result, the employee will NOT be sent for another test.

If the directed final applicant or employee declines to take the second drug test, it is considered a refusal to test. The final applicant will not be hired and the employee will be terminated. Notify the Substance Abuse Program Staff of HRD if a final applicant or employee appears to have refused to test.

Procedures for Negative Dilute Specimens

The following table shows the process for handling negative dilute specimens:

Procedures for Negative Dilute Specimens	
Who	Action
MRO	<ul style="list-style-type: none"> Report the negative dilute test to HRD in writing.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Notify the SCO of the negative dilute drug test result and the requirement to send/transport the final applicant or employee for the second drug test. The final applicant or employee is given the minimum possible advance notice that they must go to the collection site.
SCO, HRO or Supervisor	<ul style="list-style-type: none"> Complete the Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” Give the final applicant or employee a Federal Drug Testing Custody and Control Form. Fax the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.
MRO	<ul style="list-style-type: none"> Notify the Substance Abuse Program Staff of HRD and SCO of the positive test result in writing or of a negative for all test types. .
SCO or Supervisor	<ul style="list-style-type: none"> Notify the final applicant or employee of the drug test result.

Note: Notification of retest to the SCO or HRO for pre-employment is based on information from the faxed Form [2007](#), “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” that was sent to the Occupational Safety Division Substance Abuse Office.

Chapter 5 – Safety-Impact Employees

§ 1 – Introduction

Definitions

The department’s Substance Abuse Program Rules require testing of all employees in safety-impact positions.

A **Safety-Impact Position** is a full-time, part-time, temporary, project, or seasonal position which requires the performance of safety-impact activities which if performed with inattentiveness, errors in judgment, diminished coordination, dexterity, or composure could clearly result in mistakes that could present a real and imminent threat to the personal health and safety of other employees or the public, and which are performed with such independence that it cannot be reasonably assumed that those mistakes could be prevented by a supervisor or another employee.

A **Safety-Impact Activity** has one or more of the following characteristics:

- ◆ a direct, immediate relationship to safety and intimately related to the prevention of harm to the traveling public or other employees,
- ◆ fraught with extraordinary peril such that a single alcohol or drug-related lapse by an employee could have irreversible and calamitous consequences, and
- ◆ performed in an extraordinarily hazardous setting such that careless performance carries with it the attendant risk of catastrophic consequences.

A list of safety-impact activities is included in Form [2237](#), “Safety-Impact Activities Certification.”

Critical duties include driving, commercial driving, performing safety-impact activities, performing vessel crewmember duties, operating motorized equipment, supervising or assisting with the loading or unloading of a motor vehicle, and inspecting, servicing, or maintaining any vehicle.

Types of Testing

Safety-Impact Employees will be subject to the following types of testing:

Pre-Employment Testing	Drugs Only
Post-Accident Testing	Drugs AND Alcohol
Reasonable Cause Testing	Drugs and/or Alcohol
Random Testing	Drugs and/or Alcohol

Training

The department will conduct an alcohol- and drug-free awareness program which will provide all employees with initial mandatory training and periodic training as needed regarding the department’s Substance Abuse Program Rules, the personnel actions that will be taken for violations of the policy, the specifics of the program, the dangers of alcohol, inhalant, and drug abuse in the workplace, and the Employee Assistance Program (EAP).

§ 2 – Prohibited Conduct & Administrative/Disciplinary Actions

Overview

In addition to requiring that safety-impact employees be subject to the prohibitions described in [Chapter 2, All Department Employees](#), and [Chapter 3, Employees Who Drive for the Department](#), safety-impact employees are also prohibited from engaging in any of the policy violations described below.

If a safety-impact employee engages in any of the following activities:

- ◆ drinks alcohol within four hours prior to coming to work,
- ◆ drinks or possesses alcohol while on duty or while driving,
- ◆ uses alcohol within eight hours following an on-the-job accident or prior to undergoing a post-accident alcohol test,
- ◆ reports to work under the influence of drugs or alcohol,
- ◆ has a positive drug test result or an alcohol test result of 0.04 or greater, or
- ◆ voluntarily admits to an alcohol or drug problem or using alcohol or drugs in the workplace.

The supervisor or the SCO will:

- ◆ immediately remove the employee from critical duties;
- ◆ mandatorily refer the employee to the Employee Assistance Program (EAP);
- ◆ reassign the employee to non-critical duties, if available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to duty and follow-up tests; and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/Substance Abuse Professional (SAP) makes, including aftercare, or be terminated.

Note: If an employee has an alcohol test result of 0.02 or greater, but less than 0.04, then refer to the [Alcohol and Drug Tests](#) section of this chapter.

An employee will be terminated from the department if the employee refuses to test or has a positive drug test result or an alcohol test result of 0.04 or greater and is still in their initial probationary period or is a project or temporary employee.

Working Under the Influence

If a safety-impact employee is **suspected of working under the influence of drugs or alcohol**, due to a reasonable belief by a supervisor or SCO which is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance of the employee, while on duty, including when operating or riding in a state vehicle, the supervisor and the SCO will:

- ◆ immediately remove the employee from his or her work duties for 24 hours and require him or her to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted;
- ◆ take the employee for a reasonable cause test if there is enough evidence and documentation **AT THAT SPECIFIC TIME** to support reasonable cause testing;
- ◆ continue the removal of the employee from any critical duties **UNTIL**:
 - a negative drug test result is reported by the MRO, or
 - an alcohol test result less than 0.02 is reported;
- ◆ mandatorily refer the employee to the EAP if a positive drug test or alcohol test result of 0.04 or greater is reported;
- ◆ reassign the employee to non-critical duties, if available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests; and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/SAP makes, including aftercare, or be terminated.

Evidence to support reasonable cause testing is based on observed and documented physical, behavioral, or performance indicators of probable use. Supervisors must complete Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” Form [2470](#), “Indicators of Work Performance Problems,” Form [2467](#), “Reasonable Cause Determination Checklist,” AND have the approval from all required parties before sending an employee for a reasonable cause test. See the [Reasonable Cause Testing](#) section for more information.

OR

IF reasonable cause testing is not possible, after approval from all required parties, due to extenuating circumstances (i.e., closed collection site, testing equipment problems, or other unforeseen reasons),

THEN the supervisor and the SCO will:

- ◆ immediately remove the employee from his or her work duties for 24 hours and require him or her to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted;
- ◆ mandatorily refer the employee to the EAP when 24 hours have passed;

- ◆ reassign the employee to non-critical duties, if available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests; and
- ◆ require the employee to complete whatever treatment recommendations the EAP Counselors/SAP makes, including aftercare, or will be terminated.

OR

IF there is NOT enough evidence and documentation at the time to support reasonable cause testing and the employee denies working under the influence of drugs or alcohol, or refuses to explain his or her actions,

THEN the supervisor or SCO will take no further action, but will advise the employee that if it is subsequently discovered that they are working under the influence, they will be subject to administrative/disciplinary action.

Note: If there is any reason to believe that the employee is a safety risk to themselves or others, the supervisor should not allow the employee to critical duties.

Positive Test

If an employee tests **positive on a drug test or has an alcohol test result of 0.04 or greater**, the supervisor and the SCO will:

- ◆ immediately remove the employee from critical duties;
- ◆ remove the employee from duties for 24 hours after positive alcohol test;
- ◆ mandatorily refer the employee to the EAP according to the procedures in the [Mandatory Referrals](#) section of this chapter;
- ◆ reassign the employee to non-critical duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests, if prescribed; and
- ◆ require the employee to complete whatever treatment recommendations the EAP makes, including aftercare, or be terminated.

Note: If an employee has an alcohol test result of 0.02 or greater, but less than 0.04, then refer to the [Alcohol and Drug Tests](#) section of this chapter.

An employee will be terminated from the department if the employee refuses to test or has a positive drug test result or an alcohol test result of 0.04 or greater and is still in their initial probationary period or is a project or temporary employee.

Refusal to Test

If a safety-impact employee **refuses to submit to an alcohol or drug test** by

- ◆ failing to appear for any test within a reasonable time;
- ◆ explicitly declines to take a required test, whether a first test or subsequent test;
- ◆ failing to remain at the testing site until the testing process is complete;
- ◆ failing to be readily available for drug and alcohol testing after a serious accident;
- ◆ failing to attempt to provide a urine/breath specimen for any test required;
- ◆ failing to permit a directly observed or monitored collection in a drug test;
- ◆ failing to provide a sufficient urine/breath specimen, and the physician has determined, through a required medical evaluation, that there was not adequate medical explanation for the failure;
- ◆ failing to undergo a medical examination or evaluation as directed by the employer;
- ◆ failing to sign the certification at Step 2 of the Alcohol Testing Form;
- ◆ failing to cooperate with any part of the testing process, including refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, failing to wash hands after being directed to do so by the collector, or any other uncooperative behavior;
- ◆ failing to follow the observer’s instructions to raise clothing above the waist, lowering clothing and underpants, or turning around to permit the observer to determine if the employee has any type of prosthetic or other device that could be used to interfere with the collection process for an observed collection;
- ◆ possessing or wearing a prosthetic or other device that could be used to interfere with the collection process;
- ◆ admitting to the collector or medical review officer that the employee adulterated or substituted the specimen; or
- ◆ if the MRO reports a verified adulterated/substituted test result,

The SCO or supervisor will:

- ◆ be notified immediately;
- ◆ ask the collection site personnel to leave the room; and
- ◆ talk to the employee to remind him or her that refusal to take any drug or alcohol test will result in immediate termination.

IF the employee still refuses to test, THEN they will be terminated.

For situations when the employee fails to provide a sufficient urine/breath specimen, contact the Substance Abuse Program Staff of HRD.

Unable to Perform Duties Safely

If an employee is unable to perform work duties in a safe manner due to the use of prescription drugs or over-the-counter substances, while on duty, including when operating or riding in a state vehicle, the supervisor and the SCO will reassign the employee to non-critical duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted.

Admitting to Drug/Alcohol Problem or Use in the Workplace

If an employee voluntarily admits to having an alcohol, inhalant, or drug abuse problem or use in the workplace, the supervisor and the SCO will:

- ◆ immediately remove the employee from critical duties;
- ◆ mandatorily refer the employee to the EAP;
- ◆ reassign the employee to non-critical duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests (employees who admitted prior to performing any critical duties will not be required to compete follow-up testing); and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/SAP makes, including aftercare, or be terminated.

Note: Disciplinary action will not be taken against an employee who voluntarily admits to having a problem with alcohol, inhalant, or drug abuse, provided the admission occurs prior to a determination that the employee should be tested or mandatorily referred. Employees cannot admit to having an alcohol, inhalant, or drug abuse problem in order to avoid testing.

§ 3 – Mandatory Referrals

Overview

The procedures outlined in this section will be followed for safety-impact employees who engage in actions prohibited by the department that require removal from critical duties and a mandatory referral to the EAP.

Mandatory Referral Procedures

The Referral

The process through which the SCO or supervisor explain to the employee the mandatory referral process and requirements to complete treatment.

The Referral	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Meet with the employee and give him or her a copy of the Form 2474, Mandatory Referral Letter. • Advise the employee: <ul style="list-style-type: none"> • that they are being mandatorily referred to the EAP and the reason for the referral • they must comply with the mandatory referral process and any treatment requirements made by the EAP Counselors/SAP or any other treatment provider, including aftercare • mandatory referral process includes the referral, initial evaluation, treatment, follow-up evaluation, return-to-duty test, return-to-work form, aftercare and follow-up testing. • information regarding his or her referral will be kept confidential – personnel with information on the referral are supervisor, DE/DD/Administration, SCO, Substance Abuse Program Staff of HRD, EAP Case Manager, EAP Counselors/SAP, and the EAP Aftercare Team • they will be subject to return-to-duty and follow-up testing, and • failure to comply with any stage of the referral will result in termination. • Ask the employee if they have any questions. • Have the employee sign the Mandatory Referral Letter and give him or her a copy.
SCO	<ul style="list-style-type: none"> • Call 1-866-34TXDOT (866-348-9368). Inform the counselor that you are making a TxDOT mandatory referral, the employee’s name and social security number (SSN), the type of employee, the reason for the referral, and any other information requested by the counselor. <p>Caution: Employees shall not make the initial call to arrange their first appointment when they are being mandatorily referred. This process must be initiated by the SCO or the EAP will treat the referral as a self-referral.</p> <ul style="list-style-type: none"> • Have the employee talk to the EAP Counselors in private. Initial appointments will be available within three workdays of this contact. • Fax a copy of the Mandatory Referral Letter and the employee’s job profile to the EAP at (512) 328-3437 and fax or scan to the Substance Abuse Program Staff of HRD at (512) 486-5325 or HRD_RA-FAX-5124865325@txdot.gov as soon as possible after the referral call is made within 24 hours.

Employees shall not make the initial call to arrange their first appointment when they are being mandatorily referred. This process must be initiated by the SCO or the EAP will treat the referral as a self-referral.

Initial Treatment

The EAP Counselors/SAP makes the initial assessment of treatment requirements that the employee must complete in order to return to work.

Initial Treatment	
Who	Action
EAP Counselors/SAP	<ul style="list-style-type: none"> • Meet with the employee and evaluate him or her to determine what assistance is needed by the employee to resolve problems associated with alcohol or drug use and make treatment requirements. • Refer the employee to a treatment provider that best meets the needs of the employee in a cost-effective manner. Whenever possible, the EAP Counselors/SAP will refer the employee to a treatment provider that is covered by his or her insurance. • Provide the SAP letter following the initial evaluation to the Substance Abuse Program Staff of HRD.
Employee	<ul style="list-style-type: none"> • Continue to complete treatment requirements from the EAP Counselors/SAP. During initial care the employee will maintain contact with the EAP Counselors/SAPs, the SCO, and the EAP Case Manager. • Provide information to the EAP Counselors/SAP when they have completed the treatment requirements.
EAP Case Manager	<ul style="list-style-type: none"> • Provide information about the employee’s ability to work while in treatment, time off work needed and /or specific duties involved in the employee’s appointments, evaluations, and treatment. • Maintain contact with the EAP Counselors/SAP and the employee. • Advise whether the employee is compliant with the treatment requirements. If the employee is not compliant, why they are non-compliant.

Employees are allowed to use sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, to attend appointments and treatment. It is appropriate to encourage an employee to attend a meeting after work, if an appointment is available, but supervisors shall not prohibit employees from attending appointments during work hours. If you or a supervisor question whether an employee is attending appointments or treatment, you may contact the appropriate EAP Case Consultant for verification.

All return-to-duty and follow-up tests will be conducted under direct observation conditions. SCOs will coordinate with the collection site to ensure that same gender collectors are available on the day of testing.

The Follow-Up Evaluation and Return-to-Duty Process

This process includes an evaluation by the EAP Counselors/SAP with the employee and the EAP Counselor’s/SAP’s requirements for follow-up and return-to duty testing which may include additional treatment requirements.

The employee must have a negative return-to-duty test and a completed return-to-work form must be provided when the employee has completed initial treatment and before they may be reinstated to critical duties.

Employees who are subject to return-to-duty testing must pass a return-to-duty drug and/or alcohol test when prescribed by the EAP Counselors/SAP prior to returning to critical duties. The employee must have an alcohol test result of less than 0.02 or a drug test with a negative result. If an employee has a return-to-duty alcohol test result of 0.02 or greater, but less than 0.04, the employee must be removed from work duties for 24 hours and must continue in initial treatment.

The following table shows the follow-up evaluation and return-to-duty process:

Follow-up Evaluation and Return to Duty Process	
Who	Action
EAP Counselors/SAP	<ul style="list-style-type: none"> Meet with the employee to determine if the employee has demonstrated compliance with the initial evaluation treatment requirements. To complete this face to face clinical interview, the SAP will confer with and obtain appropriate documentation from the education and/or treatment program where the employee was referred. Provide a written SAP letter with requirements whether the employee has demonstrated compliance with the treatment requirements. If the employee has demonstrated compliance, make requirements for continuing care needs and include the follow-up testing plan. Determine the return-to-duty test type and the number and type of follow-up tests to be completed.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Notify the SCO to take the employee for the return-to-duty test, whether drugs or alcohol or both and the requirement for direct observation and verification.
SCO or Supervisor	<ul style="list-style-type: none"> Immediately upon receipt the return-to-duty test notification, take the employee for the return to duty test. Follow the procedures in the Alcohol and Drug Tests section. Verify drug test was conducted under direct observation and custody and control form is completed correctly. Verify alcohol test result of less than 0.02. Notify the Substance Abuse Program Staff of HRD of verification of direct observation or the drug test and alcohol test results. Retrieve test results from the current MRO test results notification system. If positive, the MRO will provide results by phone and fax.
SCO	<ul style="list-style-type: none"> Notify the EAP Case Manager of the results of the return-to-duty test and verification of direct observation.
EAP Case Manager	<ul style="list-style-type: none"> Receive results of the return-to-duty test from the SCO. For negative test results: <ul style="list-style-type: none"> Coordinate with the EAP Counselors and employee, if necessary for the completion of the return-to-work form, and Fax the completed return-to-work form to the SCO and the Substance Abuse Program Staff of HRD. For positive test results, advise that employee is not compliant and why they are not compliant.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Complete the Follow-Up Testing Plan – the form will include the follow-up testing schedule which will identify each selection period the employee needs to be tested and the type of test, whether drugs or alcohol or both. Fax or email the Follow-Up Testing Plan to the SCO.

Follow-up Evaluation and Return to Duty Process	
Who	Action
SCO or Supervisor (upon receipt of Return-to- Work form)	<ul style="list-style-type: none"> • Advise the employee: <ul style="list-style-type: none"> • they have completed initial treatment and is being returned to critical duties • of the requirement for follow-up testing, that they may be tested for up to 60 months and of the consequences of another positive test • they are transferring to the phase of treatment known as “aftercare” • to remain compliant with any continuing treatment or education requirements made by the EAP Counselors/SAP during the follow-up evaluation • to remain in contact with EAP Case Manager, the other treatment providers required by the SAP and the aftercare team, and • failure to remain compliant with all EAP requirements will result in termination.

Aftercare Treatment

In aftercare treatment employees may be subject to additional treatment requirements and follow-up testing for drugs and/or alcohol for a period of up to 60 months following their return-to-duty. At a minimum, the follow-up testing will consist of six tests in the first 12 months following the employee’s return-to-duty. If an employee has a follow-up alcohol test result of 0.02 or greater, but less than 0.04, the employee must be removed from work duties for 24 hours and scheduled for another follow-up test at a later date.

Note: For confidentiality reasons, employees who need follow-up tests should not be sent to collection sites with employees who are being randomly tested.

Aftercare Treatment	
Who	Action
EAP Case Manager	<ul style="list-style-type: none"> • Continue contact with the employee until the case is transferred to the aftercare team for monitoring. • Advise the employee in writing when the case is transferred to the aftercare team. • Advise the Substance Abuse Program Staff of HRD whether the employee is compliant with the aftercare treatment requirements; and if the employee is not compliant, why they are non-compliant.
SCO or Supervisor	<ul style="list-style-type: none"> • Retrieve drug test results from the current MRO test results notification system of the previous follow-up test and ensure the results are negative before sending an employee for a subsequent follow-up test. • Send the employee for all follow-up tests as identified in the follow-up testing plan. • Ensure the required test types are being completed. • Notify the EAP Case Manager of any concerns related to the employee’s drug or alcohol problem including work performance and DUI/DWI arrests.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Notify the EAP Case Manager of any tests completed with positive results and any alcohol tests with a result of 0.02 or greater or other concerns related to the employee’s drug or alcohol problem including work performance and DUI/DWI arrests.
Employee	<ul style="list-style-type: none"> • Remain compliant with any continuing treatment or education requirements made by the EAP Counselors/SAP during the follow-up evaluation. • Maintain required contact with the EAP Case Manager, the aftercare team when transferred, and any other treatment providers required by the EAP Counselors/SAP.

The Substance Abuse Program Staff of HRD will continue to monitor the referral for compliance and all required follow-up testing.

Completion of Treatment

Employees who are mandatorily referred to the EAP will be terminated from the department if they fail to complete treatment.

If the employee has met all requirements under his or her mandatory referral the employee will have completed treatment. The following table outlines this process:

Completion of Treatment	
Who	Action
EAP Case Manager	Verify follow-up testing is completed and no tests are awaiting results and all aftercare treatment requirements, including treatment required by the SAP, have been completed with the Substance Abuse Program Staff of HRD and the SCO.
Substance Abuse Program Staff of HRD	Verify that there are no tests awaiting results with the SCO.
EAP Case Manager	Provide the completion of treatment letter to the Substance Abuse Program Staff of HRD and SCO.
SCO or Supervisor	Advise the employee <ul style="list-style-type: none"> • they have completed all treatment requirements, and • that any additional violations of the Substance Abuse Program Rules that require a second referral will result in termination.

Temporary Modified Duty

If the employee is able to work while in treatment, the department may assign non-critical duties, if available.

Employees must accept available temporary modified duty unless they are eligible for Family and Medical Leave (FML). Employees who refuse temporary modified duty will be subject to disciplinary action, up to and including termination. Temporary modified duty, if available, must be applied consistently for all employees. See the *Human Resources Policy Manual* for more information concerning FML or temporary modified duties.

If temporary modified duty is available, but the employee refuses the temporary modified duty assignment because they are eligible for FML, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

If temporary modified duty is not available, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

Mandatory Referral Limit

Employees are limited to one mandatory referral to the EAP for substance abuse violations. Therefore, employees who need to be mandatorily referred for a second substance abuse violation, including **rehired department employees**, will be terminated with the following exceptions:

- ◆ Employees who received and completed two mandatory referrals prior to January 1, 1999, will be terminated if they require a third mandatory referral.
- ◆ Employees who received and completed one mandatory referral prior to January 1, 1999, will be mandatorily referred for a second time, if necessary, and will be terminated if they require a third mandatory referral.

The following referrals will not count toward the mandatory referral limit of one:

- ◆ Employees assessed as not needing assistance with problems associated with an alcohol or drug abuse problem on his or her first mandatory referral, and
- ◆ Employees who are mandatorily referred for an alcohol- or drug-related driving offense. (Employees who receive two alcohol- or drug-related driving offenses within a ten-year period are terminated.)

Terminations

A safety-impact employee will be terminated if they:

- ◆ refuse to take a required drug or alcohol test,
- ◆ fail to comply with a mandatory referral or to complete treatment, including aftercare,
- ◆ violate any other prohibition found in the [Substance Abuse Program Rules](#) that results in termination, or
- ◆ test positive on any type of test while in treatment, including return-to-duty or follow-up tests.

A conditionally hired commercial driver or vessel crewmember may not perform duties as a safety-impact employee and will be terminated if the pre-employment inquiry indicates that the employee has had a previous positive drug or alcohol test, refusal to test, or other violation of US DOT agency drug and alcohol testing regulations, without having completed the required substance abuse treatment.

§ 4 – Pre-Employment & Certification

Identifying a Vacancy as Safety-Impact

Before a supervisor initiates the Job Offer (JO) process, they must determine whether it is a safety-impact position. The supervisor, along with the HRO should review the list of approved job profile titles for the job profile or job description determination.

- ◆ Job Profile – all employees in these profiles must be certified as safety-impact.
- ◆ Job Responsibilities – supervisor shall review the job responsibilities and Form [2237](#), “Safety-Impact Activities Certification” to determine if the employee will perform safety-impact activities.

Form [2237](#), “Safety-Impact Activities Certification” must be completed by a supervisor for each safety-impact position they post.

After completing the form, the supervisor submits the completed Form 2237, “Safety-Impact Activities Certification” to his or her HRO with the hiring packet. The supervisor should keep a copy of the completed Form 2237 to use to certify the safety-impact employee.

Job Requisition (JR) Statements

Safety-Impact Position

When a JR is posted for a safety-impact position only, the JR should contain statements concerning the pre-employment drug test and that safety-impact employees are subject to additional drug and alcohol testing.

Safety-Impact and Commercial Driver Position

When a JR is posted for a safety-impact position, which will also be a commercial driver position, the JR should contain statements concerning the requirement for the commercial driver license, pre-employment testing and that commercial driver and safety-impact employees are subject to additional drug and alcohol testing.

For applicants applying for a position that will be both safety-impact and commercial driver, they should be pre-employment tested as a commercial driver, using the *Federal Drug Testing Custody and Control Form*. See the [Pre-Employment & Certification](#) section of Chapter 4, *Commercial Drivers*.

Special Provisions

When a JO is posted for a safety-impact position, which will also be certified as a commercial driver position, and a provision is made to allow the final applicant 60 or 90 days after the date of employment to obtain a commercial driver’s license, the JO should contain the statement concerning obtaining the commercial driver license with endorsements with (60-90) days, pre-employment drug test and that commercial drivers are subject to additional drug and alcohol testing.

Note: This will cover the employee during the 60- or 90-day time period when they will not be subject to post-accident and random drug and alcohol testing as a commercial driver but will be subject to post-accident and reasonable cause testing as a safety-impact employee.

Testing Requirements

External final applicants for safety-impact positions must pass a pre-employment drug test. A statement informing applicants of the department’s intent to conduct drug tests should appear under “Conditions of Employment” of the job offer for safety-impact positions. If the drug testing statement was excluded from the JO, the external final applicant needs to be informed by the hiring supervisor that they will still be required to take a pre-employment drug test and will be subject to testing once hired.

Current employees who are final applicants for safety-impact positions, including transfers and promotions, and employees who undergo cross training, will be subject to pre-employment drug testing. This does not include career ladder promotions unless the employee is being promoted from a non-safety-impact position to a safety-impact position. Current employees who fail to pass a pre-employment drug test will not be hired, transferred or promoted to that position and will be mandatorily referred to the EAP and required to complete treatment.

Testing Procedures

The following table provides the steps for testing procedures:

Pre-Employment Testing Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Advise interviewees of the department’s substance abuse policy and drug and alcohol testing procedures. • If the applicant requests the test results in writing, notify him or her to complete Form 2471, “Applicant or Employee Request for Drug or Alcohol Test Results.” • Inform the applicant that they must pass a physical exam, including a drug test, prior to becoming employed with the department. • Inform the applicant: <ul style="list-style-type: none"> • they must pick up their Form 484, “Job Analysis and Physical Exam Record” and Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” the next day. Make sure drug test requirement is checked off on the Form 484, “Job Analysis and Physical Exam Record.” • When the applicant comes to pick up their forms: <ul style="list-style-type: none"> • Provide to the final applicant a Forensic Drug Testing Custody and Control Form • Inform the applicant of collection sites. In most cases, an applicant will only have to go to one location for his or her physical exam and drug test. • Make an appointment with the clinic to have the services performed within five days. • Advise the applicant to take photo identification. • Inform the applicant they will not be allowed to begin work until they have a negative drug test result. • Notify the SCO of the applicant’s name and social security number.
SCO or HRO	<ul style="list-style-type: none"> • Fax the completed Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” to the Occupational Safety Division Substance Abuse Office the day of the test. • Note on the authorization form whether or not the employee is getting a pre-employment physical exam as well.
MRO	<ul style="list-style-type: none"> • Notify the SCO of the drug test result using the notification system
SCO or HRO	<ul style="list-style-type: none"> • Notify the supervisor of the drug test result.
Supervisor	<ul style="list-style-type: none"> • Notify the applicant whether or not the department, after receiving the results of the drug test and the pre-employment physical exam, will hire him or her. • If the applicant requests the test results in writing, notify him or her of the results of their pre-employment drug test, including the names of the drugs verified as positive, if applicable.

An applicant will not begin work for the department until they have passed his or her physical exam and have a negative pre-employment drug test result.

Current employees who have a positive pre-employment drug test result will not be hired, transferred, or promoted to that position. In addition, the employee will be mandatorily referred to the EAP.

Final Applicant

A final applicant will not be hired if they:

- ◆ do not report for pre-employment testing, or
- ◆ are unable to provide a urine specimen, and do not provide documentation of a medical condition, or
- ◆ have a positive pre-employment drug test result.

Note: External final applicants who are conditionally hired as safety-impact employees and who violate any USDOT agency regulation will be terminated unless they have completed the required substance abuse treatment.

If a final applicant appears to have refused to test, please call the Substance Abuse Program Staff of HRD.

Safety-Impact Certification Procedures

Form [2237](#), “Safety-Impact Activities Certification” must be completed by all new and current employees who are hired, transferred or promoted to a safety-impact position.

Safety-Impact Certification Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Provide a Safety-Impact Employee Information Packet to all safety-impact employees upon their date of hire. This packet will contain policy information. • Review the material in this packet with the safety-impact employee. • Use the Safety-Impact Activities Certification form previously completed for the JO process and review the activities with the employee. • After reviewing the material in the Safety-Impact Employee Information Packet and the Safety-Impact Activities Certification form, have the employee sign Form 2237, “Safety-Impact Activities Certification” and Form 2464, “Safety-Impact Employee Notification and Receipt of Materials.” • Make a copy of both forms for the employee. • Send both forms to the SCO. These forms serve as notification to the employee that they are subject to testing as a safety-impact employee and provide proof of mandatory Substance Abuse for Safety-Impact Employees training.
SCO	<ul style="list-style-type: none"> • Review all certification forms. If the SCO questions anything about the information on the certification form, they should notify the Substance Abuse Program Staff of HRD for further guidance. It is critical that all forms accurately represent the activities a person performs. It is the SCO’s responsibility to identify any inappropriate or inapplicable activities that may be included so that all employees are identified correctly. • Fax or mail the completed Safety-Impact Activities Certification and the Safety-Impact Employee Notification and Receipt of Materials form to the Substance Abuse Program Staff of HRD as soon as they are completed by the employee and prior to any drug or alcohol testing. • Make an additional copy of the Safety-Impact Employee Notification and Receipt of Materials and submit to the training coordinator for input into the employee’s training history. <p>Note: Any safety-impact employee who refuses to sign Form 2237 “Safety-Impact Activities Certification” or Form 2464, “Safety-Impact Employee Notification and Receipt of Materials” will be terminated.</p>

§ 5 – Post-Accident Testing

Treat Injuries First

Treat injuries first. The physical health of injured individuals is always a higher priority than drug and alcohol testing. Administer first aid as needed and ensure that injured individuals receive prompt medical treatment. Nothing in the federal regulations or this document is intended to delay necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident to obtain assistance or necessary medical care.

Testing Criteria

A drug test *and* an alcohol test will be administered to a safety-impact employee who is on their way to perform, preparing to perform, performing, or had just performed (within the workday) a safety-impact activity which results in a serious accident or personal injury and meets one of the following criteria in Form [2475](#), “Post-Accident Determination Checklist.”

For an employee to be ruled as “directly involved” in a serious accident or injury, the employee’s order, action, or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing that accident. More than one employee could be directly involved in any accident.

Form [2475](#), “Post-Accident Determination Checklist” lists all criteria and should be used to determine if the employee should be post-accident tested.

Reasonable Cause

If the supervisor or SCO reasonably suspect the employee of being under the influence of drugs or alcohol at the time of the accident, and the employee meets the requirements for reasonable cause testing with documented indicators (with the exception of a previous warning), then a post-accident test should be conducted, regardless of whether the accident meets the criteria for post-accident testing. SCOs must contact the Substance Abuse Program Staff of HRD for authorization prior to testing.

If it is determined the employee was not performing duties as a safety-impact employee, refer to Chapter 2, *All Department Employees, Reasonable Cause* and review Form [2551](#), “Indicators of Serious Accident or Injury” to determine if reasonable cause testing is warranted.

Testing Procedures

The procedures outlined in the following table should be used to determine whether a safety-impact employee should be post-accident tested.

Post-Accident Testing Procedures	
Who	Action
Safety-Impact Employee	<ul style="list-style-type: none"> • Immediately notify his or her supervisor of any vehicular accident or personal injury involving a safety-impact employee. <p>Note: If the immediate supervisor of a safety-impact employee involved in an accident is not available, then any supervisor may assist the SCO in making the testing determination at the scene of an accident, as long as the supervisor has been trained on post-accident testing.</p>
Supervisor	<ul style="list-style-type: none"> • Immediately contact the SCO by phone when any accident or injury occurs that involves a safety-impact employee to see if the accident or injury meets the criteria for testing. Together you will determine if the employee should be tested by completing Form 2475, “Post-Accident Determination Checklist.” When determining if the circumstances meet the criteria, answer the questions, in order, on the form. • Document when you spoke with the SCO. • Complete the Post-Accident Determination Checklist and send an initialed copy of it to the SCO as soon as possible after the telephone contact. • Remind safety-impact employees who are subject to drug and alcohol testing that they must remain readily available for such testing after an accident. In addition, any safety-impact employee subject to a post-accident test must not consume alcohol for eight hours after the accident or until after an alcohol test is administered. <p>Note: Supervisors should carry Forensic Drug Testing Custody and Control Forms, Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” and Post-Accident Determination Checklists secured in their vehicles to facilitate timely testing of employees who have accidents.</p>
SCO	<ul style="list-style-type: none"> • Discuss the circumstances of the accident by phone with the supervisor. • Determine if the circumstances meet the criteria found on the Post-Accident Determination Checklist. If you are unsure whether the accident fits the criteria for post-accident testing, call the Substance Abuse Program Staff of HRD. When determining if the circumstances meet the criteria, answer the questions, in order, on the form. • Give verbal approval to the supervisor to test the safety-impact employee. • Document when verbal approval is given. • Sign the Post-Accident Determination Checklist once received from the supervisor. • Contact the appropriate DE/DD or applicable member of the Administration to advise them of the accident and that a safety-impact employee has been tested. • Fax the Post-Accident Determination Checklist to the Substance Abuse Program Staff of HRD, along with a copy of the TxDOT Vehicular Accident Report or the Employer’s First Report Of Injury Or Illness form and other documentation. • Fax the completed Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” to the Occupational Safety Division Substance Abuse Office the day of the test. • Notify the Substance Abuse Program Staff of HRD when a test is administered and who was tested. <p>Note: Form 2475, “Post-Accident Determination Checklist,” must be completed with all initials within 24 hours after the accident. However, the form does not have to be completed before the employee is tested. All documentation related to making a determination to test must be attached to the Checklist.</p>

Testing Time Limits

Safety-impact employees who are given post-accident tests are allowed to continue their work duties even though the results of the drug tests are not yet available UNLESS there is reason to believe that they are under the influence at the time of the accident.

Alcohol and drug tests must be administered within the specified time period for accidents and injuries:

- ◆ **Alcohol** tests shall be administered within two hours of the accident or injury. If not administered within two hours, continue to try and administer a test for up to eight hours. No alcohol test will be administered after eight hours have passed.
- ◆ **Drug** tests must be administered within 32 hours of the accident or injury. No drug test will be administered after 32 hours have passed.

Note: If the 2-hour, 8-hour or 32-hour deadlines are not met, the reason(s) must be documented on Form [2475](#), “Post-Accident Determination Checklist.”

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test, follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

Law Enforcement

If law enforcement is involved, cooperate and allow local law enforcement authorities to conduct their investigation. The police may require tests to determine if the employee is under the influence of drugs or alcohol. If so, request that the results of the test be released to the department. Always get the officer’s name, badge number, and phone number, so that a written copy of the officer’s report may be obtained at a later date.

Document the fact that law enforcement administered a drug and/or alcohol test and that we used that test result on Form [2475](#), “Post-Accident Determination Checklist.” If law enforcement is only testing for drugs or alcohol, but not both, continue to administer the remaining test. If you are not able to administer a test, document the reason why.

TxDOT cannot request that a blood test be administered for any reason. However, the results of a breath or blood test, for the use of alcohol, conducted by the Federal, State, or local officials will be accepted by the department provided they conform to applicable testing requirements. In addition, results of a urine test for the use of drugs, conducted by Federal, State, or local officials will be accepted by the department provided they conform to applicable testing requirements.

Hospitals

If an employee is admitted to a hospital, check to see if DPS has ordered any drug or alcohol testing. Otherwise, you may order drug and alcohol tests after the employee's release, if it is within the testing time limits for drug and alcohol testing. The treating physician should also determine if the employee is able to be transported to be tested without further injury.

In an emergency situation, when no collection site is available, SCOs or supervisors may request that a hospital collect a drug urine specimen. The urine sample should be sent to the department designated lab. Therefore, it is essential for the SCOs to furnish the hospital with our Forensic Drug Testing Custody and Control Form and Form [2007](#), "Authorization for Physical Urine Drug Screen and Breath Alcohol Test" to ensure that urine specimens are sent to the correct lab.

Critical Incident Stress Debriefings

To help co-workers who are affected by deaths or serious injuries of employees who are involved in accidents, Critical Incident Stress Debriefing (CISD) sessions may be conducted by Alliance Work Partners, our Employee Assistance Program vendor. These sessions are group meetings designed to assist employees in minimizing the stressful effects of trauma. Alliance's professionally trained counselors will help employees express their feelings, understand the traumatic incident, and help them recognize many of the common reactions to trauma. They will also teach survival skills for managing post-trauma stresses. These debriefings typically occur within 24 to 72 hours of the incident and last 30 minutes to an hour, or longer, depending on the circumstances.

If a critical incident occurs and you would like to schedule a Critical Incident Stress Debriefing (CISD) session for your employees, please call the Human Resources Division Wellness Program Staff at 512-486-5358 or 512-486-5435.

§ 6 – Reasonable Cause Testing

Overview

An employee who is reasonably suspected of working under the influence of drugs or alcohol, or who has a severe vehicle incident while driving for the department or severe injury, will be required to undergo a drug or alcohol test.

The decision to test must be based on a reasonable belief by a supervisor or SCO, who has been trained on the signs and symptoms of drug or alcohol use, that the employee is suspected of working under the influence. The belief must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance indicators of probable use. The observations of physical, behavioral, or performance indicators of probable use may include indications of the chronic use and withdrawal effects of drugs.

Making a reasonable cause determination also requires some evidence of probable linkage between behavior or events and drug or alcohol use on the job or the performance of duties under the influence of drugs or alcohol. The supervisor should show that there are objective facts pointing to drug or alcohol affected behavior which cause a work-related problem.

Physical or behavioral signs and symptoms of drug or alcohol use which cause a work-related problem may be caused by reasons other than drug or alcohol use. For example, poor coordination may be caused by exhaustion due to a lack of sleep. A believable explanation may eliminate the suspicion of drug or alcohol use, but it does not eliminate the need for disciplinary action for a work-related problem. Tell the employee of the observations and facts which formed the basis of the conclusion that the employee is working under the influence of drugs or alcohol and ask the employee for an explanation of the signs and symptoms.

Reports from Co-Workers or Other Witnesses

If co-workers or other witnesses report a specific event or behavior, the supervisor should ask them to describe exactly what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was drug or alcohol related? On what basis did they reach their conclusion?

Supervisors or SCOs should validate all co-worker reports through closer observation of the employee. It may also be appropriate to discuss the reports with the employee. However, the names of witnesses should not be given to the employee. Be sure to document all reports and discussions with employees and co-workers.

SCOs or supervisors can consider co-worker concerns and should call the Substance Abuse Program Staff of HRD to discuss these concerns. If the supervisor or SCO validates co-worker concerns, follow the Reasonable Cause Testing Determination Procedures.

Reasonable Cause Testing Determination Procedures

Reasonable Cause Testing WILL NOT be conducted UNLESS:

- ◆ the decision to test is made by a supervisor who has been trained on the signs and symptoms of drug and alcohol use and on department policy and procedures, and
- ◆ the supervisor documents physical or behavioral indicators of drug or alcohol use and any related work performance problems, and
- ◆ the SCO concurs with the supervisor’s recommendation to send for a reasonable cause test, and
- ◆ the testing has been authorized by the Substance Abuse Program Staff of HRD, and
- ◆ the testing has been approved by the appropriate DE/DD or designee or applicable member of the Administration.

Refer to Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” Form [2470](#), “Indicators of Work Performance Problems,” and Form [2467](#), “Reasonable Cause Determination Checklist.” Refer also to the [Appendix](#) for additional information on Reasonable Cause.

The **supervisor** should follow these procedures to determine whether there is reasonable cause to test an employee for alcohol or drugs:

Reasonable Cause Testing Determination Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Observe the employee’s behavior if there is reason to believe that the employee may be working under the influence of drugs or alcohol Complete Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist.” • Contact the SCO for guidance, if necessary. • Discuss your observations with the employee in an attempt to discover non-substance abuse related reasons for the behavior, symptom, or event. A believable explanation may eliminate the suspicion of drug or alcohol use, but it does not eliminate the need for disciplinary action for a work-related problem.

When confronting employees about suspected substance abuse, denial should be an expected reaction. The employee may give many explanations and protests to avoid a drug or alcohol test or a mandatory referral. In these situations, state that you neither believe nor disbelieve the employee, that a request for a urine or breath specimen is not an accusation, but rather a request for additional objective data to put any suspicions to rest.

Possible Outcomes from the Discussion with the Employee

IF it is discovered that the employee’s performance is impaired due to the use of prescription drugs or over-the-counter substances,

THEN remove the employee from assigned duties as described in the [Unable to Perform Duties Safely](#) section of this chapter.

IF the employee voluntarily admits to having a drug or alcohol problem,

THEN follow the procedures in the [Admitting to Drug/Alcohol Problem or Use in the Workplace](#) section of Chapter 1, All Employees.

IF you do not have enough indicators and documentation that the employee is working under the influence,

THEN continue to observe the employee, document any observations, and warn the employee that if it is subsequently discovered that they are working under the influence, they will be subject to administrative or disciplinary actions, up to and including termination.

IF you do have enough indicators and documentation that the employee is working under the influence or had a severe vehicle incident while driving for the department or severe injury,

THEN continue following the procedures below for reasonable cause testing.

- ◆ Immediately contact the SCO by phone if you suspect that an employee is working under the influence of drugs or alcohol. Discuss your observations with the SCO and the results of the discussion that you had with the employee. Document your conversation with the SCO.
- ◆ Fax an initialed copy of Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” and Form [2467](#), “Reasonable Cause Determination Checklist” to the SCO as soon as possible after the telephone contact.

When a reasonable cause testing decision is pending and the employee is a real and present danger to personal safety or property, the supervisor is responsible for removing the employee from critical duties. The employee will be reassigned to other duties or required to take his or her own accrued leave until 1) the employee is taken for a reasonable cause test and the results are reported, or 2) 24 hours have passed following the determination that the employee is working under the influence of drugs or alcohol.

The following are procedures for reasonable cause testing:

Reasonable Cause Testing Determination Procedures	
Who	Action
SCO	<ul style="list-style-type: none"> • Discuss with the supervisor the employee’s behavior and the information from the discussion between the supervisor and the employee. • Discuss with the employee, if appropriate. • Call the Substance Abuse Program Staff of HRD to determine whether there is enough justification and documentation to test the employee based on Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist.”
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Review the SCO’s and supervisor’s recommendation and all available documentation. • Determine whether there is enough justification and documentation to test the employee based on Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist,” and any other information. • Determine whether or not the employee should be tested for drugs, alcohol or both. • Authorize reasonable cause testing, if appropriate.
SCO	<ul style="list-style-type: none"> • Immediately contact the appropriate DE/DD or applicable member of the Administration, discuss the observations and your recommendations and the recommendations of the Substance Abuse Program Staff of HRD. • Submit Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist” to him or her as soon as possible after the telephone contact.
DE/DD, Applicable Member of the Administration or Designee	<ul style="list-style-type: none"> • Review the recommendations of the supervisor, SCO and Substance Abuse Program Staff of HRD and the available information. • Verbally approve or deny the recommendation to test.
SCO	<ul style="list-style-type: none"> • Upon the decision to test, the employee must be removed from critical duties until the test results are reported by the MRO. • Document when verbal approval is given by DE/DD or applicable member of the Administration for a reasonable cause test. • Contact the supervisor when the DE/DD or designee or applicable member of the Administration gives verbal approval. Be sure to tell the supervisor whether the employee will be tested for drugs, alcohol or both. • Prepare and fax to the supervisor or clinic Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” Contact the clinic to ensure they are aware of the reasonable cause test request. • Initial the “Reasonable Cause Determination Checklist” once received from the supervisor. • Forward the original “Reasonable Cause Determination Checklist” to the appropriate DE/DD or applicable member of the Administration for their initials. • Fax or email a copy of Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist” to the Substance Abuse Program Staff of HRD for initials and retention.

Note: Form [2467](#), “Reasonable Cause Determination Checklist,” must be completed with all initials within 24 hours after the incident. All documentation related to making a determination to test must be attached to the Checklist, all of which should be submitted to the Substance Abuse Program Staff of HRD.

Testing Time Limits

Reasonable cause testing for alcohol and drugs must be administered within the specified time periods:

- ◆ **Alcohol** tests shall be administered within two hours of the testing determination. If not administered in the two hours, continue to try and administer a test for up to eight hours. No alcohol test will be administered after eight hours have passed.
- ◆ **Drug** tests must be administered within 32 hours of the testing determination. No drug test will be administered after 32 hours have passed.
- ◆ **Note:** If the 2-hour, 8-hour or 32-hour deadlines are not met, the reason(s) must be documented on the “Reasonable Cause Determination Checklist.”

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

All Reasonable Cause Testing Decisions must be authorized by the Substance Abuse Program Staff of HRD and approved by the DE/DD or applicable member of the Administration, or designee not below the level of Deputy DE, Deputy DD, or Business Services Coordinator prior to administering a reasonable cause test.

§ 7 – Random Testing

Overview

Safety-Impact employees will be selected for testing on a random basis in a manner to ensure that each safety-impact employee has a substantially equal chance of selection on a scientifically valid basis. The testing frequency and selection process will be such that a safety-impact employee's chance of selection continues to exist throughout his or her employment as a safety-impact employee. An outside vendor is used to generate the random selections.

At least 10% of safety-impact employees will be tested annually for alcohol and at least 50% for drugs. Each time random selections are made, they are made from a list which contains all TxDOT department ID numbers where safety-impact employees are assigned. Therefore, every employee who is certified to be randomly tested is on the list, under his or her department ID number, every time a selection is made.

Every designated employee on the original random testing list that was absent the day the random testing was conducted will be tested if they return to work during the monthly testing cycle. Upon the return to work, the employee must be sent to a testing facility that is capable of performing the required tests. A supervisor, lead worker, or project leader need only transport the employee to the test site if the employee has previously tested positive or if there is any other reason to suspect a problem with the employee transporting themselves.

Random Testing Procedures

The following procedures should be used when random testing is to be conducted:

Random Testing Procedures	
Who	Action
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Toward the end of each month, send to the collection vendor the lists of safety-impact employees to be random tested the following month. • Send the same lists of safety-impact employees to be random tested to the SCOs.
SCO	<ul style="list-style-type: none"> • Verify the random testing lists of safety-impact employees. • Notify the Substance Abuse Program Staff of HRD of any discrepancies. • Provide information to Substance Abuse Program Staff to add or change information on random testing list. • Coordinate with the collection vendor for the collection site location and date and time of testing.
Collection Vendor	<ul style="list-style-type: none"> • Coordinate with the SCOs: <ul style="list-style-type: none"> • whether the tests will be for drugs only or both drugs and alcohol, • the collection site location(s), and • the date and time of the test.
SCO	<ul style="list-style-type: none"> • Notify supervisors by phone the afternoon before the test date of: <ul style="list-style-type: none"> • the date of the test, • the names of employees subject to testing (employees will be sent to a collection site as soon as they report to work, unless the collections will be done on-site), • attend the random testing, • whether the tests will be for drugs only or both drugs and alcohol, and • the collection site location. • Notify the next level supervisor if the immediate supervisor is included in the testing or there are other issues. <p>Note: A random test cannot be substituted for an employee’s required return-to-duty or follow-up test.</p>
Supervisor	<ul style="list-style-type: none"> • Notify employees the morning of the test date: <ul style="list-style-type: none"> • that they will be tested that day, • whether the tests will be for drugs only or both drugs and alcohol, • of the collection site location, and • that they must take photo identification to the collection site. • Notify the SCO of employees who were sent for testing.
Safety-Impact employee	<ul style="list-style-type: none"> • Report directly to the collection site and return directly to work as soon as collections are completed.

Random Testing Procedures	
Who	Action
SCO (for on-site collections)	<ul style="list-style-type: none"> • Ensure that employees are not permitted to leave the room or have access to telephones once they have reported to the collection site for testing. • Verify that all employees on the list are tested. • Note the reason the employee is not tested on the testing list. • Initial the verified amount of employees tested. • Obtain enough Custody and Control forms from the collector to conduct testing for each employee not tested. • Coordinate with the supervisor and annotate next to each name the date the employee will return to the workplace. Absent employee must be tested within the month of the original random testing list. • Fax: <ul style="list-style-type: none"> • Copy 2 of the Custody and Control Form and the revised random test list to the MRO’s office; • Copy 4 of the Custody and Control Form, the Alcohol Test Forms and a copy of the revised random test list to the Substance Abuse Program Staff of HRD; • copy of the revised random test list to Occupational Safety Division. • Provide a copy of the revised random test list to the collector. • Mail original testing documents to the appropriate recipients.
SCO (for clinic collections)	<ul style="list-style-type: none"> • Coordinate in advance with the closest collection facility to conduct the required testing on the date indicated for each employee. Ensure each employee will receive the same required testing. • Prepare Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” for each employee to be tested at a clinic collection site. • On the day each employee will be sent to the clinic, fax the Authorization form to OCC. • The collection site is responsible for faxing and mailing the test forms to the MRO and OCC.

Adding to the Random Testing List

Note: *Employees can only be added to the random testing list prior to or on the date of the actual random test.*

The following procedures should be followed when it is necessary to add a safety-impact employee to the random testing list:

Action
<ul style="list-style-type: none"> • Call the Substance Abuse Program Staff of HRD to see if Form 2237, “Safety-Impact Activities Certification” and Form 2464, “Safety-Impact Employee Notification and Receipt of Materials” for the employee who needs to be added to the testing list are on file with HRD.
<ul style="list-style-type: none"> • If the Safety-Impact Activities Certification is not on file with HRD, fax the completed certification and Safety-Impact Employee Notification and Receipt of Materials to the Substance Abuse Program Staff of HRD as soon as possible.
<ul style="list-style-type: none"> • Once the forms have been received by HRD, the Substance Abuse Program Staff will approve the addition of the employee to the list and the testing of that employee with the rest of the safety-impact employees in that section. You will be instructed to write the certified employee’s name and employee ID on the testing list.
<ul style="list-style-type: none"> • If you are unable to submit the Safety-Impact Activities Certification form to the Substance Abuse Program Staff of HRD prior to the completion of random testing for that section, DO NOT have the employee random tested. Submit Form 2237, “Safety-Impact Activities Certification” and Form 2464, “Safety-Impact Employee Notification and Receipt of Materials” as soon as possible.

Excusing a Safety-Impact Employee from Random Testing

An employee must not be excused from the random testing without a valid reason. The only reasons an employee should be excused from random testing list are:

- ◆ the employee is in initial treatment of a mandatory referral;
- ◆ the employee has transferred to another section;
- ◆ the employee no longer qualifies or performs duties as a safety-impact employee for the department;
- ◆ the employee is no longer employed by the department; or
- ◆ the employee will not return to work during the month the original random test was conducted.

If a safety-impact employee reports to work and then feels ill or has a medical emergency and has to leave work after the testing has begun, make every effort to have the employee tested before they leave. The collection vendor will give employees who are ill or have an emergency priority for testing. If this is not possible, the employee should be tested as soon as they return to work.

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

Discussing Test Results

Discussions with employees and supervisors about random test results should be done privately. It is not appropriate for anyone to discuss test results with a group, i.e. “We only had one positive the last time out of this group,” especially since this employee may be identified by co-workers. This is a serious breach of confidentiality and may result in disciplinary action being taken against the employee who shared the information.

Any designee who tells safety-impact employees about random testing prior to random testing dates will be subject to disciplinary action, up to and including termination.

§ 8 – Alcohol and Drug Tests

Overview

The alcohol and drug testing procedures outlined in this section should be followed when an employee must undergo drug or alcohol testing as required in the Substance Abuse Program Rules.

Alcohol Tests

The following procedures should be used to process alcohol testing and what actions to take with a positive test result.

Testing Process	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Fill out Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” The Breath Alcohol Technician will provide the employee with a non-DOT Alcohol Testing Form at the time of the test. • Transport/send the employee to a collection site and wait for the results of the alcohol test. • Fax a copy of the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.

If Test Results Are 0.02 or Greater, but Less Than 0.04	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Inform the employee that they will have to take their own sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until 24 hours have passed. • Make every effort to ensure that the employee does not drive home. Offer to drive the employee home or to contact someone to pick him or her up at the collection site. • Notify the SCO or supervisor of the test result and the actions you took. • Return the employee to their normal duties after 24 hours have passed from the time the employee was tested.
Collection Site	<ul style="list-style-type: none"> • Fax the test results to the employer.

If Test Results Are 0.04 or Greater	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Inform the employee that they will have to take their own sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until 24 hours have passed. • Make every effort to ensure that the employee does not drive home. Offer to drive the employee home or to contact someone to pick him or her up at the collection site. • Notify the SCO or supervisor of the test result and the actions you took. • Immediately remove the employee from critical duties. • Mandatorily refer the employee to the EAP when they report to work after 24 hours have passed. (See the Mandatory Referrals section of this chapter)
Collection Site	<ul style="list-style-type: none"> • Fax the test results to the employer.

Drug Tests

The following procedures should be used to process drug testing and what actions to take with a positive test result:

Drug Tests	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Fill out Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” • Take a Forensic Drug Testing Custody and Control Form with you. • Send/transport the employee to a collection site. • Fax the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.
Collection Site Personnel	<ul style="list-style-type: none"> • Fax Copy 2 of the Custody and Control Form to the MRO’s office; Copy 4 of the Custody and Control Form to the employer.
MRO	<ul style="list-style-type: none"> • Notify the Substance Abuse Program Staff of HRD and the SCO of positive drug test results in writing.
SCO	<ul style="list-style-type: none"> • Notify the employee’s supervisor of the drug test result.
Supervisor	<ul style="list-style-type: none"> • Notify the employee of the drug test result. • For positive test results: <ul style="list-style-type: none"> • Immediately remove the employee from critical duties. • Mandatorily refer the employee to the EAP. (See the Mandatory Referrals section of this chapter.)

SCOs can check the drug test notification system for test results. If the drug test results are not available after three days, please contact the Substance Abuse Program Staff of HRD.

Negative Dilute Drug Test Results

Overview

If a drug test has a negative dilute test result, the employee or final applicant will be directed to take another test.

The second drug test must NOT be collected under direct observation, unless there is another basis for the use of direct observation. Direct observation will be decided only by collection site personnel.

The result of the second drug test becomes the test of record. If the second test has the same result, the employee will NOT be sent for another test.

If the directed final applicant or employee declines to take the second drug test, it is considered a refusal to test. The final applicant will not be hired and the employee will be terminated. Notify the Substance Abuse Program Staff of HRD if a final applicant or employee appears to have refused to test.

Procedures for Negative Dilute Specimens

The following table shows the process for handling negative dilute specimens:

Procedures for Negative Dilute Specimens	
Who	Action
MRO	<ul style="list-style-type: none"> Report the negative dilute test to HRD in writing.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Notify the SCO of the negative dilute drug test result and the requirement to send/transport the final applicant or employee for the second drug test. The final applicant or employee is given the minimum possible advance notice that they must go to the collection site.
SCO, HRO or Supervisor	<ul style="list-style-type: none"> Complete the Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” Give the final applicant or employee a Forensic Drug Testing Custody and Control Form. Fax the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.
MRO	<ul style="list-style-type: none"> Notify the Substance Abuse Program Staff of HRD and the SCO of the positive test result in writing or of a negative for all test types.
SCO or Supervisor	<ul style="list-style-type: none"> Notify the final applicant or employee of the drug test result.

Note: Notification of retest to the SCO or HRO for pre-employment is based on information from the faxed Form [2007](#), “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” that was sent to the Occupational Safety Division Substance Abuse Office.

Chapter 6 – Vessel Crewmembers

§ 1 – Introduction

Federal Requirements

The United States Coast Guard (USCG) regulations (46 CFR Parts 4 & 16) require mandatory drug and alcohol testing of all vessel crewmembers.

Definitions

A **Vessel Crewmember** is an employee who:

- ◆ is working on board a vessel, whether or not as a member of the vessel’s crew;
- ◆ occupies or performs the functions of a position required by the vessel’s Certificate of Inspection;
- ◆ performs the duties of a patrolman or watchman; or
- ◆ is assigned during an emergency to warn passengers or control the movement of passengers on a vessel.

Operating a vessel means to navigate, steer, direct, manage, or sail a vessel; or to control, monitor, or maintain the vessel’s main or auxiliary equipment or systems, including determining the vessel’s position, piloting, directing the vessel along a desired trackline, keeping account of the vessel’s progress through the water, ordering or executing changes in course, rudder position, or speed, and maintaining a lookout; controlling, operating, monitoring, maintaining, or testing the vessel’s propulsion and steering systems, electric power generators, bilge, ballast, fire, and cargo pumps, deck machinery including winches, windlasses, and lifting equipment, lifesaving equipment and appliances, firefighting systems and equipment, and navigation and communication equipment; and mooring, anchoring, and line handling, loading or discharging of cargo or fuel, assembling or disassembling of tows, and maintaining the vessel’s stability or watertight integrity.

Critical duties include driving, commercial driving, performing safety-impact activities, performing vessel crewmember duties, operating motorized equipment, supervising or assisting with the loading or unloading of a motor vehicle, and inspecting, servicing, or maintaining any vehicle.

Types of Testing

Vessel crewmembers will be subject to the following types of testing:

Pre-Employment Testing	Drugs Only
Post-Accident Testing	Drugs AND Alcohol
Reasonable Cause Testing	Drugs and/or Alcohol
Random Testing	Drugs and/or Alcohol

Training

The department will conduct an alcohol and drug-free awareness program, which will provide all employees with initial mandatory training and periodic training as needed regarding the department’s Substance Abuse Program Rules, the personnel actions that will be taken for violations of the policy, the specifics of the program, the dangers of alcohol, inhalant, and drug abuse in the workplace, and the Employee Assistance Program (EAP).

§ 2 – Prohibited Conduct & Administrative/Disciplinary Actions

In addition to requiring that vessel crewmembers be subject to the prohibitions described in [Chapter 2, All Department Employees](#), and [Chapter 3, Employees Who Drive for the Department](#), vessel crewmembers are also prohibited from engaging in any of the policy violations described below.

If a vessel crewmember engages in any of the following activities:

- ◆ drinks alcohol within four hours prior to coming to work,
- ◆ drinks or possesses alcohol while on duty or while performing vessel crewmember duties,
- ◆ uses alcohol within eight hours following an on-the-job accident or prior to undergoing a post-accident alcohol test,
- ◆ reports to work under the influence of drugs or alcohol,
- ◆ has a positive drug test result or an alcohol test result of 0.04 or greater, or
- ◆ voluntarily admits to an alcohol or drug problem or using alcohol or drugs in the workplace.

The supervisor or the SCO will:

- ◆ immediately remove the employee from critical duties;
- ◆ mandatorily refer the employee to the Employee Assistance Program (EAP);
- ◆ reassign the employee to non-critical duties, if available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided – for mandatory referrals for a positive drug test, the MRO must assess the employee to be drug-free and to pose a sufficiently low risk for subsequent drug use before a return-to-work form is provided;
- ◆ require the employee to take and pass all return-to duty and follow-up tests as prescribed by the EAP Counselors/SAP/MRO; and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/SAP/MRO makes, including aftercare, or be terminated.

Note: If an employee has an alcohol test result of 0.02 or greater, but less than 0.04, then refer to the [Alcohol and Drug Tests](#) section of this chapter.

An employee will be terminated from the department if the employee refuses to test or has a positive drug test result or an alcohol test result of 0.04 or greater and is still in their initial probationary period or is a project or temporary employee.

Working Under the Influence

If a vessel crewmember is **suspected of working under the influence of drugs or alcohol**, due to a reasonable belief by a supervisor or SCO which is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance of the employee, while on duty, including when operating or riding in a state vehicle or performing vessel crewmember duties, the supervisor and the SCO will:

- ◆ immediately remove the employee from his or her work duties for 24 hours and require him or her to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted;
- ◆ send the employee for a reasonable cause test if there is enough evidence and documentation **AT THAT SPECIFIC TIME** to support reasonable cause testing;
- ◆ continue the removal of the employee from vessel crewmember duties **UNTIL**:
 - a negative drug test result is reported by the MRO or
 - an alcohol test result less than 0.02 is reported;
- ◆ mandatorily refer the employee to the EAP if a positive drug test or alcohol test result of 0.04 or greater is reported;
- ◆ reassign the employee to non-critical duties, if available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted until a completed return-to-work form is provided – for mandatory referrals for a positive drug test, the MRO must assess the employee to be drug-free and to pose a sufficiently low risk for subsequent drug use before a return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests as prescribed by the EAP Counselors/SAP/MRO; and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/SAP/MRO makes, including aftercare, or be terminated.

Evidence to support reasonable cause testing is based on observed and documented physical, behavioral, or performance indicators of probable use. Supervisors must complete Form [2469](#), “Indicators of Drug Use,” Form [2468](#), “Indicators of Alcohol Use,” Form [2470](#), “Indicators of Work Performance Problems,” and Form [2467](#), “Reasonable Cause Determination Checklist” AND have the approval from all required parties before taking an employee for a reasonable cause test. See the [Reasonable Cause Testing](#) section for more information.

OR

IF reasonable cause testing is not possible, after approval of all required parties, due to extenuating circumstances (i.e., closed collection site, testing equipment problems or other unforeseen reasons),

THEN the supervisor and the SCO will:

- ◆ immediately remove the employee from his or her work duties for 24 hours and require him or her to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted;
- ◆ mandatorily refer the employee to the EAP when 24 hours have passed;

- ◆ reassign the employee to non-critical duties, if available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests; and
- ◆ require the employee to complete whatever treatment recommendations the EAP Counselors/SAP makes, including aftercare, or be terminated.

OR

IF there is NOT enough evidence and documentation at the time to support reasonable cause testing and the employee denies working under the influence of drugs or alcohol, or refuses to explain his or her actions,

THEN the supervisor or SCO will take no further action, but will advise the employee that if it is subsequently discovered that they are working under the influence, they will be subject to administrative/disciplinary action.

Note: If there is any reason to believe that the employee is a safety risk to themselves or others, the supervisor should not allow the employee to perform critical duties.

Positive Test

If an employee tests **positive on a drug test or has an alcohol test result of 0.04 or greater**, the supervisor and the SCO will:

- ◆ immediately remove the employee from critical duties;
- ◆ remove the employee from duties for 24 hours after positive alcohol test;
- ◆ mandatorily refer the employee to the EAP according to the procedures in the [Mandatory Referrals](#) section of this chapter;
- ◆ reassign the employee to non-critical duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests, if prescribed; and
- ◆ require the employee to complete whatever treatment recommendations the EAP makes, including aftercare, or be terminated.

Note: If an employee has an alcohol test result of 0.02 or greater, but less than 0.04, then refer to the [Alcohol and Drug Tests](#) section of this chapter.

An employee will be terminated from the department if the employee refuses to test or has a positive drug test result or an alcohol test result of 0.04 or greater and is still in their initial probationary period or is a project or temporary employee.

Refusal to Test

If a vessel crewmember **refuses to submit to an alcohol or drug test** by:

- ◆ failing to appear for any test within a reasonable time,
- ◆ explicitly declines to take a required test, whether a first test or subsequent test,
- ◆ failing to remain at the testing site until the testing process is complete,
- ◆ failing to be readily available for drug and alcohol testing after a serious accident,
- ◆ failing to attempt to provide a urine/breath specimen for any test required,
- ◆ failing to permit a directly observed or monitored collection in a drug test,
- ◆ failing to provide a sufficient urine/breath specimen, and the physician has determined, through a required medical evaluation, that there was not adequate medical explanation for the failure,
- ◆ failing to undergo a medical examination or evaluation as directed by the employer,
- ◆ failing to sign the certification at Step 2 of the Alcohol Testing Form,
- ◆ failing to cooperate with any part of the testing process, including refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, failing to wash hands after being directed to do so by the collector, or any other uncooperative behavior,
- ◆ failing to follow the observer’s instructions to raise clothing above the waist, lowering clothing and underpants, or turning around to permit the observer to determine if the employee has any type of prosthetic or other device that could be used to interfere with the collection process for an observed collection,
- ◆ possessing or wearing a prosthetic or other device that could be used to interfere with the collection process,
- ◆ admitting to the collector or medical review officer that the employee adulterated or substituted the specimen, or
- ◆ if the MRO reports a verified adulterated/substituted test result,

The SCO or Supervisor will:

- ◆ be notified immediately,
- ◆ ask the collection site personnel to leave the room, and
- ◆ talk to the employee to remind him or her that refusal to take any drug or alcohol test will result in immediate termination.

IF the employee still refuses to test, THEN they will be terminated.

For situations when the employee fails to provide a sufficient urine/breath specimen, contact the Substance Abuse Program Staff of HRD.

Unable to Perform Duties Safely

If an employee is unable to perform work duties in a safe manner due to the use of prescription drugs or over-the-counter substances, while on duty, including when operating or riding in a state vehicle, the supervisor and the SCO will reassign the employee to non-critical duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted.

Admitting to Drug/Alcohol Problem or Use in the Workplace

If an employee voluntarily admits to having an alcohol, inhalant, or drug abuse problem or use in the workplace, the supervisor and the SCO will:

- ◆ immediately remove the employee from critical duties;
- ◆ mandatorily refer the employee to the EAP;
- ◆ reassign the employee to non-critical duties, if applicable and available, or require the employee to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided;
- ◆ require the employee to take and pass all return-to-duty and follow-up tests (employees who admitted prior to performing any critical duties will not be required to compete follow-up testing); and
- ◆ require the employee to complete whatever treatment requirements the EAP Counselors/SAP makes, including aftercare, or be terminated.

Note: Disciplinary action will not be taken against an employee who voluntarily admits to having a problem with alcohol, inhalant, or drug abuse, provided the admission occurs prior to a determination that the employee should be tested or mandatorily referred. Employees cannot admit to having an alcohol, inhalant, or drug abuse problem in order to avoid testing.

§ 3 – Mandatory Referrals

Overview

For vessel crewmembers who engage in actions prohibited by the department that require removal from critical duties and a mandatory referral to the EAP, the following procedures shall be followed.

Mandatory Referral Procedures

The Referral

The process through which the SCO or supervisor explain to the employee the mandatory referral process and requirements to complete treatment.

The Referral	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Meet with the employee and give him or her a copy of the Form 2474, Mandatory Referral Letter. • Advise the employee: <ul style="list-style-type: none"> • that they are being mandatorily referred to the EAP and the reason for the referral • they must comply with the mandatory referral process and any treatment requirements made by the EAP Counselors/SAP or any other treatment provider, including aftercare • mandatory referral process includes the referral, initial evaluation, treatment, follow-up evaluation, return-to-duty test, return-to-work form, aftercare and follow-up testing. • information regarding his or her referral will be kept confidential – personnel with information on the referral are supervisor, DE/DD/Administration, SCO, Substance Abuse Program Staff of HRD, EAP Case Manager, EAP Counselors/SAP, and the EAP Aftercare Team • they will be subject to return-to-duty and follow-up testing, and • failure to comply with any stage of the referral will result in termination. • Ask the employee if they have any questions. • Have the employee sign the Mandatory Referral Letter and give him or her a copy.
SCO	<ul style="list-style-type: none"> • Call 1-866-34TXDOT (866-348-9368). Inform the counselor that you are making a TxDOT mandatory referral, the employee’s name and social security number (SSN), the type of employee, the reason for the referral, and any other information requested by the counselor. <p>Caution: Employees shall not make the initial call to arrange their first appointment when they are being mandatorily referred. This process must be initiated by the SCO or the EAP will treat the referral as a self-referral.</p> <ul style="list-style-type: none"> • Have the employee talk to the EAP Counselors in private. Initial appointments will be available within three workdays of this contact. • Fax a copy of the Mandatory Referral Letter and the employee’s job profile to the EAP at (512) 328-3437 and to the Substance Abuse Program Staff of HRD at (512) 486-5325 as soon as possible after the referral call is made.

Initial Treatment

The EAP Counselors/SAP makes the initial assessment of treatment requirements that the employee must complete in order to return to work.

Initial Treatment	
Who	Action
EAP Counselors/SAP	<ul style="list-style-type: none"> • Meet with employee and evaluate them to determine what assistance is needed to resolve problems associated with alcohol or drug use and make treatment requirements. • Refer the employee to a treatment provider that best meets the needs of the employee in a cost-effective manner. Whenever possible, the EAP Counselors/SAP will refer the employee to a treatment provider, which is covered by his or her insurance. • Provide the SAP letter following the initial evaluation as identified in 49 CFR Section 40.311 to the Substance Abuse Program Staff of HRD.
Employee	<ul style="list-style-type: none"> • Continue to complete treatment requirements from the EAP Counselors/SAP. During initial care the employee will maintain contact with the EAP Counselors/SAPs, the SCO and the EAP Case Manager. • Provide information to the EAP Counselors/SAP when they have completed the treatment requirements.
EAP Case Manager	<ul style="list-style-type: none"> • Provide information about the employee’s ability to work while in treatment, time off work needed and /or specific duties involved in the employee’s appointments, evaluations, and treatment. • Maintain contact with the EAP Counselors/SAP and the employee. • Advise whether the employee is compliant with the treatment requirements. If the employee is not compliant, why they are non-compliant.

Employees are allowed to use sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, to attend appointments and treatment. It is appropriate to encourage an employee to attend a meeting after work, if an appointment is available, but supervisors shall not prohibit employees from attending appointments during work hours. If you or a supervisor question whether an employee is attending appointments or treatment, you may contact the appropriate EAP Case Consultant for verification.

All return-to-duty and follow-up tests will be conducted under direct observe conditions. SCOs will coordinate with the collection site to ensure that same gender collectors are available on the day of testing.

The Follow-Up Evaluation and Return-to-Duty Process

This process includes an evaluation by the EAP Counselors/SAP/MRO with the employee and the EAP Counselor’s/SAP’s/MRO’s requirements for follow-up and return-to duty testing which may include additional treatment requirements.

The employee must have a negative return-to-duty test and a completed return-to-work form must be provided when the employee has completed initial treatment and before they may be reinstated to critical duties.

Employees who are subject to return-to-duty testing must pass a return-to-duty drug and/or alcohol test when prescribed by the EAP Counselors/SAP/MRO prior to returning to critical duties. The employee must have an alcohol test result of less than 0.02 or a drug test with a negative result. If an employee has a return-to-duty alcohol test result of 0.02 or greater, but less than 0.04, the employee must be removed from work duties for 24 hours and must continue in initial treatment.

The following table shows the follow-up evaluation and return-to-duty process:

Follow-up Evaluation and Return to Duty Process	
Who	Action
EAP Counselors/ SAP/MRO	<ul style="list-style-type: none"> Meet with the employee to determine if the employee has demonstrated compliance with the initial evaluation treatment requirements. To complete this face to face clinical interview, the SAP will confer with and obtain appropriate documentation from the education and/or treatment program where the employee was referred. Provide a written SAP /MRO letter with requirements whether the employee has demonstrated compliance with the treatment requirements. The SAP/MRO letter assesses the employee to be drug-free and to pose a sufficiently low risk for subsequent drug use. If the employee has demonstrated compliance, make requirements for continuing care needs and include the follow-up testing plan. Determine the return-to-duty test and the number and type of follow-up tests to be completed.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Notify the SCO to take the employee for the return-to-duty test, whether drugs or alcohol or both and the requirement for direct observation and verification.
SCO or supervisor	<ul style="list-style-type: none"> Immediately upon receipt of the return-to-duty test notification, take the employee for the return to duty test. Follow the procedures in the Alcohol and Drug Tests section. Verify drug test was conducted under direct observation and custody and control form is completed correctly. Verify alcohol test result of less than 0.02. Notify the Substance Abuse Program Staff of HRD of verification of direct observation or the drug test and alcohol test results. Call the MRO for an appointment to complete the MRO assessment. This assessment can be completed by phone. Retrieve test results from the current MRO test results notification system. If positive, the MRO will provide results by phone and fax.
MRO	<ul style="list-style-type: none"> Complete the assessment and determine that the individual is drug-free and the risk of subsequent use of drugs by that person is sufficiently low to justify their return to work. Provide results of the assessment to the Substance Abuse Program Staff of HRD.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Notify the EAP Case Manager of the results of the return-to-duty test and MRO assessment. If the MRO assesses the employee as not drug-free or is a risk of subsequent use, the employee will continue in initial treatment. Notify the EAP Case Manager of the results of the return-to-duty test and verification of direct observation.
SCO	<ul style="list-style-type: none"> For positive test results, notify the nearest Officer in Charge, Marine Inspection (OCMI).
EAP Case Manager	<ul style="list-style-type: none"> Receive results of the return-to-duty test and the MRO assessment. For negative test results and MRO assessment: <ul style="list-style-type: none"> Coordinate with the EAP Counselors and employee, if necessary for the completion of the return-to-work form, and Fax the completed return-to-work form to the SCO and the Substance Abuse Program Staff of HRD. For positive test results and or unfavorable MRO assessment, advise that the employee is not compliant and why they are not compliant.

Follow-up Evaluation and Return to Duty Process	
Who	Action
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Complete the Follow-Up Testing Plan – the form will include the follow-up testing schedule which will identify each selection period the employee needs to be tested and the type of test, whether drugs or alcohol or both. • Fax or email the Follow-Up Testing Plan to the SCO.
SCO or Supervisor (upon receipt of Return-to-Work form)	<ul style="list-style-type: none"> • Advise the employee: <ul style="list-style-type: none"> • they have completed initial treatment and is being returned to critical duties • of the requirement for follow-up testing , that they may be tested for up to 60 months and of the consequences of another positive test • they are transferring to the phase of treatment known as “aftercare” • to remain compliant with any continuing treatment or education requirements made by the EAP Counselors/SAP/MRO during the follow-up evaluation • to remain in contact with EAP Case Manager, the other treatment providers required by the SAP and the aftercare team, and • failure to remain compliant with all EAP requirements will result in termination.

Aftercare Treatment

In aftercare treatment employees may be subject to additional treatment requirements and follow-up testing for drugs and/or alcohol for a period of up to 60 months following their return-to-duty. At a minimum, the follow-up testing will consist of six tests in the first 12 months following the employee's return-to-duty. Vessel crewmembers who had a positive drug test are subject to follow-up testing requirements from both the EAP Counselors/SAP and the MRO. The follow-up testing requirements from each will be combined into one consolidated follow-up testing plan. All follow-up testing requirements must be completed in order to complete treatment. If an employee has a follow-up alcohol test result of 0.02 or greater, but less than 0.04, the employee must be removed from work duties for 24 hours and scheduled for another follow-up test at a later date.

Note: For confidentiality reasons, employees who need follow-up tests should not be sent to collection sites with employees who are being randomly tested.

Aftercare Treatment	
Who	Action
EAP Case Manager	<ul style="list-style-type: none"> • Continue contact with the employee until the case is transferred to the aftercare team for monitoring. • Advise the employee in writing when the case is transferred to the aftercare team. • Advise the Substance Abuse Program Staff of HRD whether the employee is compliant with the aftercare treatment requirements; and if the employee is not compliant, why they are non-compliant.
SCO or Supervisor	<ul style="list-style-type: none"> • Retrieve drug test results from the current MRO test results notification system of the previous follow-up test and ensure the result is negative before sending an employee for a subsequent follow-up test. • Send the employee for all follow-up tests as identified in the follow-up testing plan. • Ensure the required test types are being completed. • Notify the EAP Case Manager of any concerns related to the employee's drug or alcohol problem including work performance and DUI/DWI arrests.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Notify the EAP Case Manager of any tests completed with positive results and any alcohol tests with a result of 0.02 or greater or other concerns related to the employee's drug or alcohol problem including work performance and DUI/DWI arrests.
Employee	<ul style="list-style-type: none"> • Remain compliant with any continuing treatment or education requirements made by the EAP Counselors/SAP/MRO during the follow-up evaluation. • Maintain required contact with the EAP Case Manager, the aftercare team when transferred and any other treatment providers required by the EAP Counselors/SAP/MRO.

The Substance Abuse Program Staff of HRD will continue to monitor the referral for compliance and all required follow-up testing.

Completion of Treatment

Employees who are mandatorily referred to the EAP will be terminated from the department if they fail to complete treatment.

If the employee has met all requirements under his or her mandatory referral the employee will have completed treatment. The following table outlines this process:

Completion of Treatment	
Who	Action
EAP Case Manager	<ul style="list-style-type: none"> Verify follow-up testing is completed and no tests are awaiting results and all aftercare treatment requirements, including treatment required by the SAP, have been completed with the Substance Abuse Program Staff of HRD and the SCO.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Verify that there are no tests awaiting results with the SCO.
EAP Case Manager	<ul style="list-style-type: none"> Provide the completion of treatment letter to the Substance Abuse Program Staff of HRD and SCO.
SCO or Supervisor	<ul style="list-style-type: none"> Advise the employee <ul style="list-style-type: none"> they have completed all treatment requirements that any additional violations of the Substance Abuse Program Rules that require a second referral will result in termination.

Temporary Modified Duty

If the employee is able to work while in treatment, the department may assign non-critical duties, if available.

Employees must accept available temporary modified duty unless they are eligible for Family and Medical Leave (FML). Employees who refuse temporary modified duty will be subject to disciplinary action, up to and including termination. Temporary modified duty, if available, must be applied consistently for all employees. See the *Human Resources Policy Manual* for more information concerning FML or temporary modified duties.

If temporary modified duty is available, but the employee refuses the temporary modified duty assignment because they are eligible for FML, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

If temporary modified duty is not available, they will be required to take sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until a completed return-to-work form is provided.

Mandatory Referral Limit

Employees are limited to one mandatory referral to the EAP for substance abuse violations. Therefore, employees who need to be mandatorily referred for a second substance abuse violation, including **rehired department employees**, will be terminated with the following exceptions:

- ◆ Employees who received and completed two mandatory referrals prior to January 1, 1999, will be terminated if they require a third mandatory referral.
- ◆ Employees who received and completed one mandatory referral prior to January 1, 1999, will be mandatorily referred for a second time, if necessary, and will be terminated if they require a third mandatory referral.

The following referrals will not count toward the mandatory referral limit of one:

- ◆ Employees assessed as not needing assistance with problems associated with an alcohol or drug abuse problem on his or her first mandatory referral, and
- ◆ Employees who are mandatorily referred for an alcohol- or drug-related driving offense. (Employees who receive two alcohol- or drug-related driving offenses within a ten-year period are terminated.)

Terminations

A vessel crewmember will be terminated if they:

- ◆ refuse to take a required drug or alcohol test;
- ◆ fail to comply with a mandatory referral or to complete treatment, including aftercare;
- ◆ test positive on any type of test while in treatment, including return-to-duty or follow-up tests; or
- ◆ violate any other prohibition found in the Substance Abuse Program Rules which results in termination.
- ◆

Form [2472](#), “Notification of Access to Substance Abuse Professionals (SAPs)” will be provided to the employee at termination so they will have access, through the EAP’s toll-free number, to a list of SAPs who can help them complete the federally mandated treatment requirements.

A conditionally hired vessel crewmember may not perform duties as a safety-impact employee and will be terminated if the pre-employment inquiry indicates that the employee has had a previous positive drug or alcohol test, refusal to test, or other violation of US DOT agency drug and alcohol testing regulations, without having completed the required substance abuse treatment.

§ 4 – Pre-Employment & Certification

Job Requisition (JR) Statements

Vessel Crewmember or Vessel Crewmember and Safety-Impact Position

Port Bolivar Ferry

- ◆ When a job offer (JO) is posted for a vessel crewmember or vessel crewmember and safety-impact position, the JO should contain the statements concerning the mariner's license, certificate of registry or merchant mariner's document at the time of application, pre-employment drug test and that vessel crewmembers are subject to additional drug and alcohol testing.

Port Aransas Ferry

- ◆ When a job offer (JO) is posted for a vessel crewmember or vessel crewmember and safety-impact position, the JO should contain the statements concerning the pre-employment drug test and that vessel crewmembers are subject to additional drug and alcohol testing.
- ◆ Some position may require the statement concerning the mariner's license, certificate of registry or merchant mariner's document at the time of application,

Testing Requirements

External final applicants for commercial driver positions must pass a pre-employment drug test. A statement informing applicants of the department's intent to conduct drug tests should appear under "Conditions of Employment" of the job offer (JO) for commercial driver positions. If the drug testing statement was excluded from the JO, the external final applicant needs to be informed by the hiring supervisor that they will still be required to take a pre-employment drug test and will be subject to testing once hired. Applicants who fail to pass the test will be sent Form [2472](#), "Notification of Access to Substance Abuse Professionals (SAPs)."

Current employees who are final applicants for commercial driver positions, including transfers, promotions, and employees who undergo cross training, will be subject to pre-employment drug testing. This does not include career ladder promotions unless the employee is being promoted from a non-commercial driver position to a commercial driver position. Current employees who fail to pass a pre-employment drug test will not be hired, transferred or promoted to that position and will be mandatorily referred to the EAP and required to complete treatment.

Pre-Employment Testing Procedures

The following table provides the steps for testing procedures:

Pre-Employment Testing Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Advise interviewees of the department’s substance abuse policy and drug and alcohol testing procedures. • If the applicant requests the test results in writing, notify him or her to complete Form 2471, “Applicant or Employee Request for Drug or Alcohol Test Results.” • Make a conditional offer of employment to a final applicant. • Inform the applicant that they must pass a physical exam, including a drug test, prior to becoming employed with the department. • Inform the applicant: <ul style="list-style-type: none"> • they are subject to a pre-employment inquiry, and • they must pick up their Form 484, “Job Analysis and Physical Exam Record” and Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” the next day. Make sure drug test requirement is checked off on the Form 484, “Job Analysis and Physical Exam Record.” • When the applicant comes to pick up their forms: <ul style="list-style-type: none"> • have them sign all pre-employment inquiry forms (1940 and 1944) • provide to the final applicant a Federal Drug Testing Custody and Control Form • inform the applicant of collection sites (In most cases, an applicant will only have to go to one location for his or her physical exam and drug test.) • make an appointment with the clinic to have the services performed within five days • advise the applicant to take photo identification, and • inform the applicant they will not be allowed to begin work until they have a negative drug test result. • Notify the SCO of the applicant’s name and social security number.
SCO or HRO	<ul style="list-style-type: none"> • Fax the completed Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” to the Occupational Safety Division Substance Abuse Office the day of the test. • Note on the authorization form whether or not the employee is getting a pre-employment physical exam as well.
MRO	<ul style="list-style-type: none"> • Notify the SCO of the drug test result using the notification system.
SCO	<ul style="list-style-type: none"> • Notify the supervisor of the drug test result.
Supervisor	<ul style="list-style-type: none"> • Notify the applicant whether or not the department, after receiving the results of the drug test and the pre-employment physical exam, will hire him or her. • If the applicant requests the test results in writing, notify him or her of the results of their pre-employment drug test, including the names of the drugs verified as positive, if applicable.
SCO or HRO	<ul style="list-style-type: none"> • For positive pre-employment test results, mail Form 2472, “Notification of Access to Substance Abuse Professionals (SAPs)” to the applicant so they will have access, through the EAP’s toll-free number, to a list of SAPs who can help them complete the federally mandated treatment requirements. Provide a copy of the form to the Substance Abuse Program Staff of HRD • Keep a copy of the letter for documentation purposes. • Notify the nearest Officer in Charge, Marine Inspection (OCMI)

An applicant will not begin work for the department until they have passed his or her physical exam and have a negative pre-employment drug test result.

Current employees who have a positive pre-employment drug test result will not be hired, transferred, or promoted to that position. In addition, the employee will be mandatorily referred to the EAP.

Inquiries

Overview

Final applicants for vessel crewmember positions are required to sign Form [1940](#), “Conditional Offer of Employment for Commercial Drivers and Vessel Crewmembers,” upon hire, acknowledging that the offer will be rescinded if the department receives information of previous drug and alcohol violations, without the driver receiving the required substance abuse treatment. Final applicants are required to indicate on this form whether or not they have (1) tested positive on, or refused to take, a pre-employment test for an employer in the two years preceding the date of application, and as a result were not hired for a US DOT-regulated position; (2) for those who have tested positive or refused to test, whether they have completed all required assessment and treatment requirements pursuant to 49 CFR Sec. 40.25; and (3) whether they have performed vessel crewmember duties for an employer during the two years preceding the date of application.

Federal regulations also require that prospective employers request prior drug and alcohol testing information from the previous employers of all external final applicants for vessel crewmember positions, if the applicants performed vessel crewmember duties for them during the two years prior to the date of application with the department. Only the following information is requested:

- ◆ Alcohol test results of 0.04 or higher alcohol concentration
- ◆ Verified positive drug test results
- ◆ Refusals to be tested (including verified adulterated or substituted tests)
- ◆ Other violations of US DOT agency drug and alcohol testing regulations, and
- ◆ Drug and alcohol information obtained from previous employers by previous employers.

Inquiry Procedures

The Pre-Employment Inquiry Procedures below describe in more detail the process for obtaining the required pre-employment inquiry information from applicants, previous employers, and SAPs. Although prior testing information is being requested from previous employers and final applicants, the department still requires that all final applicants for commercial driver, safety-impact, and vessel crewmember positions undergo pre-employment drug testing as described in the Pre-Employment Testing sections of the Substance Abuse Program Manual.

HROs, SCOs and supervisors should follow the procedures below when requesting prior drug and alcohol testing information:

Pre-Employment Inquiry Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Select the final applicant. • Make a conditional offer of employment to the final applicant. • When applicant picks up their pre-employment physical and drug testing forms, have applicant complete and sign Form 1940, “Conditional Offer of Employment for Commercial Drivers and Vessel Crewmembers.” <p>Note: Since different procedures are to be followed for different answers to each of the questions in Part A, it is recommended that you merely follow the instructions on the form to complete the process. If the final applicant does not sign Form 1940, they will not be conditionally hired.</p> <ul style="list-style-type: none"> • If the applicant answers “Yes” to Question 3 on Form 1940, indicating that they have performed vessel crewmember duties for an employer in the preceding two years: <ul style="list-style-type: none"> • Conditionally hired employee must complete Form 1944, “Request/Consent Form for Release of Alcohol/Controlled Substances Testing Records,” for each applicable previous employer for the past two years. • Forward the form(s) to his or her HRO or SCO
HRO or SCO	<ul style="list-style-type: none"> • Send by fax or mail Form 1944, “Request/Consent Form for Release of Alcohol/Controlled Substances Testing Records,” to previous employers for the past two years • Follow-up with previous employers in 14 days, by phone, to check the status of the information request • Review the information from the previous employer(s) to determine whether prior violations exist. If so, contact the conditionally hired employee and have him or her sign Form 1945, “Records Release Form for Substance Abuse Professionals for Evaluation/Treatment Records” which will be sent to the SAP. • Send Form 1945, “Records Release Form for Substance Abuse Professionals for Evaluation/Treatment Records,” to obtain information on the individual’s compliance with treatment requirements. • Notify the Substance Abuse Program Staff of HRD of any reports that indicate a positive drug or alcohol test, a refusal to test, or any other violation of US DOT agency drug and alcohol testing regulations. • Notify the supervisor of the information received and discuss the action which should be taken. <p>Caution: IF those conditionally hired employees who previously violated a US DOT agency drug or alcohol testing regulation were either not assessed by a SAP, or did not comply with his or her treatment requirements, THEN they will not be hired by the department. IF the individual has already started working for the department, THEN they will be terminated. These employees should also be given Form 2472, “Notification of Access to Substance Abuse Professionals (SAPs)” so they will have access, through the EAP’s toll-free number, to a list of SAPs who can help them complete the federally mandated treatment requirements.</p> <p>Note: If the required information is not available from a previous employer and the SCO/HRO has made a good faith effort to obtain the information, the SCO/HRO will document his or her efforts to obtain the required information and advise the supervisor to continue to allow the conditionally hired employee to work. Report previous employers who refuse to release the requested information to the Substance Abuse Program Staff of HRD who will report this information to US DOT. The company name, contact person, addresses, and phone number of these employers may be submitted by e-mail or by memo.</p>

Final Applicant

A final applicant will not be hired if he or she:

- ◆ does not report for pre-employment testing;
- ◆ is unable to provide a urine specimen, and does not provide documentation of a medical condition;
- ◆ has a positive pre-employment drug test result;
- ◆ has a pre-employment inquiry indicating that the employee has had a previous positive drug or alcohol test result, a refusal to test, or other US DOT violation without having completed the required substance abuse treatment; or
- ◆ does not sign Form [1940](#), “Conditional Offer of Employment for Commercial Drivers and Vessel Crewmembers.”

If a final applicant appears to have refused to test, please call the Substance Abuse Program Staff of HRD.

Vessel Crewmember Certification

Form [2466](#), “Vessel Crewmember Certification” must be completed by all new and current employees who are hired, transferred, or promoted to a position that requires the employee to work on board a vessel, or requires a mariner’s license, certificate of registry, or merchant mariners’ document.

The following table shows steps to take to certify a vessel crewmember:

Vessel Crewmember Certification Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Provide a Vessel Crewmember Employee Information Packet to all vessel crewmember employees upon their date of hire. This packet will contain policy information. • Review the material in this packet with the vessel crewmember. • After reviewing the material in the Vessel Crewmember Employee Information Packet, have the employee sign Form 2466, “Vessel Crewmember Certification” and Form 2465, “Vessel Crewmember Notification and Receipt of Materials.” • Make a copy of both forms for the employee. • Send both forms to the SCO. These forms serve as notification to the employee that they are subject to testing as a vessel crewmember and provide proof of mandatory substance abuse training for vessel crewmembers.
SCO	<ul style="list-style-type: none"> • Fax or mail the completed Vessel Crewmember Certification and the Vessel Crewmember Notification and Receipt of Materials form to the Substance Abuse Program Staff of HRD as soon as they are completed by the employee and prior to any drug or alcohol testing. • Make an additional copy of the Vessel Crewmember Notification and Receipt of Materials and submit to the training coordinator for input into the employee’s training history. <p>Note: Any vessel crewmember who refuses to sign the Vessel Crewmember Certification form or the Vessel Crewmember Notification and Receipt of Materials form will be terminated.</p>

Temporary Deck Hand Duty as Vessel Crewmembers

Occasionally throughout the year there is a need for some additional employees to provide assistance to and work at the ferry operation at Port Aransas. These periods occur most often during holiday and school breaks.

Only certified commercial drivers may perform these temporary duties as vessel crewmembers. One of the Coast Guard testing requirements is that these temporary employees be subject to the same types of testing as the vessel crewmembers. Commercial drivers are the only other employees who are subject to federal random and post-accident testing.

The Coast Guard also requires these employees have a negative drug test in the previous 12 months. We can provide a waiver for commercial drivers who meet the negative drug test requirement. The temporary duty deck hands must also be certified and provided the training as Vessel Crewmembers.

The following procedures should be followed to process the waiver required to allow other employees to perform those duties.

Process Temporary Deck Hands Waiver	
Who	Action
SCO, HRO or Supervisor	<ul style="list-style-type: none"> • Provide a request for waiver for temporary deck hands to the Substance Abuse Program Staff of HRD via e-mail or fax. Include: <ul style="list-style-type: none"> • the dates of the temporary period, and • the names and employee ID of temporary duty deck hands.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Prepare the Temporary Deck Hands table. For each employee on the list from the SCO: <ul style="list-style-type: none"> • Include the name and employee ID of each identified employee, and • Review the testing record, certification status and complete the table. • Annotate if the waiver can be granted for each employee on the table. • Fax or e-mail the completed table to the SCO.
SCO, HRO or Supervisor	<ul style="list-style-type: none"> • Review the table. Complete any missing requirements for each temporary deck hand so they will be able to perform temporary deck hand duties. • Follow the procedures for drug testing in the Alcohol and Drug Tests Section • Follow the procedures for certifying commercial drivers in the Pre-Employment & Certification section of Chapter 4, and • Follow the procedures for Vessel Crewmember certification in the Vessel Crewmember Certification section in this chapter.

§ 5 – Post-Accident Testing

Treat Injuries First

Treat injuries first. The physical health of injured individuals is always a higher priority than drug and alcohol testing. Administer first aid as needed and ensure that injured individuals receive prompt medical treatment. Nothing in the federal regulations or this document is intended to delay necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident to obtain assistance or necessary medical care.

Testing Criteria

A drug test *and* an alcohol test will be administered to a vessel crewmember who is working on a vessel, which results in a serious marine accident or injury and meets one of the criteria on Form [2476](#), “Post-Accident Determination Checklist.”

A drug test *and* an alcohol test will be administered to a vessel crewmember who is performing any duties involving a vessel and the vessel crewmember is “directly involved” in the accident.

For an employee to be ruled as “directly involved” in a serious accident or injury, the employee’s order, action or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing that accident. More than one employee could be directly involved in any accident.

Form [2476](#), “Post-Accident Determination Checklist” lists all criteria and should be used to determine if the employee should be post-accident tested.

Reasonable Cause

If the supervisor or SCO reasonably suspect the employee of being under the influence of drugs or alcohol at the time of the accident, and the employee meets the requirements for reasonable cause testing with documented indicators (with the exception of a previous warning), then a post-accident test should be conducted, regardless of whether the accident meets the criteria for post-accident testing. SCOs must contact the Substance Abuse Program Staff of HRD for authorization prior to testing

If it is determined the employee was not performing duties as a vessel crewmember or safety-impact employee, refer to Chapter 2, *All Department Employees, Reasonable Cause* and review Form [2551](#), “Indicators of Serious Accident or Injury” to determine if reasonable cause testing is warranted.

Testing Procedures

The procedures outlined in the following table should be used to determine whether a vessel crewmember should be post-accident tested.

Post-Accident Testing Procedures	
Who	Action
Vessel Crewmember	<ul style="list-style-type: none"> • Immediately notify his or her supervisor of any accident or personal injury involving a vessel crewmember and a vessel. <p>Note: If the immediate supervisor of a vessel crewmember involved in an accident is not available, then any supervisor may assist the SCO in making the testing determination at the scene of an accident, as long as the supervisor has been trained on post-accident testing.</p>
Supervisor	<ul style="list-style-type: none"> • Immediately contact the SCO by phone when any accident or injury occurs that involves a vessel crewmember to see if the accident or injury meets the criteria for testing. Together you will determine if the employee should be tested by completing Form 2476, “Post-Accident Determination Checklist.” • Document when you spoke with the SCO. • Complete the Post-Accident Determination Checklist and send an initialed copy of it to the SCO as soon as possible after the telephone contact. • Remind vessel crewmembers who are subject to drug and alcohol testing that they must remain readily available for such testing after an accident. In addition, any vessel crewmember subject to a post-accident test must not consume alcohol for eight hours after the accident or until after an alcohol test is administered. <p>Note: Supervisors should carry Federal Drug Testing Custody and Control Forms, Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” and Post-Accident Determination Checklists to facilitate timely testing of employees who have accidents.</p>
SCO	<ul style="list-style-type: none"> • Discuss the circumstances of the accident by phone with the supervisor. • Determine if the circumstances meet the criteria found on Form 2476, “Post-Accident Determination Checklist.” When determining if the circumstances meet the criteria, answer the questions, in order, on the form. If you are unsure whether the accident fits the criteria for post-accident testing, call the Substance Abuse Program Staff of HRD. • Give verbal approval to the supervisor to test the vessel crewmember. • Document when verbal approval is given. • Initial Form 2476, “Post-Accident Determination Checklist” once received from the supervisor. • Contact the appropriate DE, DD or OD or applicable member of the Administration to advise them of the accident and that a vessel crewmember has been tested. • Gather all documentation related to the accident. Federal regulations require documentation of any accident that fits the criteria for a post-accident test which includes documentation on all tests administered as well as tests that should have been administered but were not due to extenuating circumstances (i.e., collection sites closed, time limits expired, etc.). • Fax the Post-Accident Determination Checklist to the Substance Abuse Program Staff of HRD, along with a copy of the TxDOT Vehicular Accident Report or the Employer’s First Report Of Injury Or Illness form and other documentation. • Fax the completed Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” to the Occupational Safety Division Substance Abuse Office the day of the test. • Notify the Substance Abuse Program Staff of HRD when a test is administered and who was tested. <p>Note: Form 2476, “Post-Accident Determination Checklist” must be completed with all initials within 24 hours after the accident. However, the form does not have to be completed before the employee is tested. All documentation related to making a determination to test must be attached to the Checklist.</p>

Testing Time Limits

Vessel crewmembers who are given post-accident tests are allowed to continue their work duties even though the results of the drug tests are not yet available UNLESS there is reason to believe that they are under the influence at the time of the accident.

Alcohol and drug tests should be administered within the specified time period for accidents and injuries:

- ◆ **Alcohol** tests shall be administered within two hours of the accident or injury. If not administered within two hours, continue to try and administer a test for up to eight hours. No alcohol test will be administered after eight hours have passed.
- ◆ **Drug** tests shall be administered within 32 hours of the accident or injury or as soon as practicable.

Note: If the 2-hour, 8-hour or 32-hour deadlines are not met, the reason(s) must be documented on the Post-Accident Determination Checklist.

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test, follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

Law Enforcement

If law enforcement is involved, cooperate and allow local law enforcement authorities to conduct their investigation. The police may require tests to determine if the employee is under the influence of drugs or alcohol. If so, request that the results of the test be released to the department. Always get the officer's name, badge number, and phone number so that a written copy of the officer's report may be obtained at a later date.

Document the fact that law enforcement administered a drug and/or alcohol test and that we used that test result on Form [2476](#), "Post-Accident Determination Checklist." If law enforcement is only testing for drugs or alcohol, but not both, continue to administer the remaining test. If you are not able to administer a test, document the reason why.

TxDOT cannot request that a blood test be administered for any reason. However, the results of a breath or blood test, for the use of alcohol, conducted by the Federal, State, or local officials will be accepted by the department provided they conform to applicable testing requirements. In addition, results of a urine test for the use of drugs, conducted by Federal, State, or local officials will be accepted by the department provided they conform to applicable testing requirements.

Hospitals

When a vessel crewmember is admitted to a hospital, check to see if USCG or DPS has ordered any drug or alcohol testing. Otherwise, you may order drug and alcohol tests after a vessel crewmember's release, if it is within the testing time limits for drug and alcohol testing.

In an emergency situation, when no collection site is available, SCOs or supervisors may request that a hospital collect a drug urine specimen. The urine specimen should be sent to the department-designated lab. Therefore, it is essential for the SCOs to furnish the hospital with our Federal Drug Testing Custody and Control Form and Form [2007](#), "Authorization for Physical Urine Drug Screen and Breath Alcohol Test" to ensure that urine specimens are sent to the correct lab.

Vessel crewmembers may be required to be blood tested if the vessel crewmember is unable to take a breath alcohol test due to the severity of his or her injuries.

Critical Incident Stress Debriefings

To help co-workers who are affected by deaths or serious injuries of employees who are involved in accidents, Critical Incident Stress Debriefing (CISD) sessions may be conducted by Alliance Work Partners, our Employee Assistance Program vendor. These sessions are group meetings designed to assist employees in minimizing the stressful effects of trauma. Alliance's professionally trained counselors will help employees express their feelings, understand the traumatic incident, and help them recognize many of the common reactions to trauma. They will also teach survival skills for managing post-trauma stresses. These debriefings typically occur within 24 to 72 hours of the incident and last 30 minutes to an hour, or longer, depending on the circumstances.

If a critical incident occurs and you would like to schedule a Critical Incident Stress Debriefing (CISD) session for your employees, please call the Human Resources Division Wellness Program Staff at 512-486-5358 or 512-486-5435.

§ 6 – Reasonable Cause Testing

Overview

An employee who is reasonably suspected of working under the influence of drugs or alcohol, or who has a severe vehicle incident while driving for the department or severe injury, will be required to undergo a drug or alcohol test.

The decision to test must be based on a reasonable belief by a supervisor or SCO, who has been trained on the signs and symptoms of drug or alcohol use, that the employee is suspected of working under the influence. The belief must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance indicators of probable use. The observations of physical, behavioral, or performance indicators of probable use may include indications of the chronic use and withdrawal effects of drugs.

Making a reasonable cause determination also requires some evidence of probable linkage between behavior or events and drug or alcohol use on the job or the performance of duties under the influence of drugs or alcohol. The supervisor should show that there are objective facts pointing to drug or alcohol affected behavior that causes a work-related problem.

Physical or behavioral signs and symptoms of drug or alcohol use that cause a work-related problem may be caused by reasons other than drug or alcohol use. For example, poor coordination may be caused by exhaustion due to a lack of sleep. A believable explanation may eliminate the suspicion of drug or alcohol use, but it does not eliminate the need for disciplinary action for a work-related problem. Tell the employee of the observations and facts that formed the basis of the conclusion that the employee is working under the influence of drugs or alcohol and ask the employee for an explanation of the signs and symptoms.

Reports from Co-Workers or Other Witnesses

If co-workers or other witnesses report a specific event or behavior, the supervisor should ask them to describe exactly what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was drug or alcohol related? On what basis did they reach their conclusion?

SCOs or supervisors should validate all co-worker concerns through closer observation of the employee. It may also be appropriate to discuss the concerns with the employee. However, the names of witnesses should not be given to the employee. Be sure to document all concerns and discussions with employees and co-workers.

SCOs or supervisors can consider co-worker concerns and should call the Substance Abuse Program Staff of HRD to discuss these concerns. If the supervisor or SCO validates co-worker concerns, follow the Reasonable Cause Testing Determination Procedures.

Reasonable Cause Testing Determination Procedures

Reasonable Cause Testing WILL NOT be conducted UNLESS:

- ◆ the decision to test is made by a supervisor who has been trained on the signs and symptoms of drug and alcohol use and on department policy and procedures, AND
- ◆ the supervisor documents physical or behavioral indicators of drug or alcohol use and any related work performance problems, AND
- ◆ the SCO concurs with the supervisor’s recommendation to send for a reasonable cause test, AND
- ◆ the testing has been authorized by the Substance Abuse Program Staff of HRD, AND
- ◆ the testing has been approved by the District Engineer or designee or applicable member of the Administration prior to administering a reasonable cause test.

Refer to Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” Form [2470](#), “Indicators of Work Performance Problems,” and Form [2467](#), “Reasonable Cause Determination Checklist.” Refer also to the [Appendix](#) for additional information on Reasonable Cause.

The **supervisor** should follow these procedures to determine whether there is reasonable cause to test an employee for alcohol or drugs:

Reasonable Cause Testing Determination Procedures	
Who	Action
Supervisor	<ul style="list-style-type: none"> • Observe the employee’s behavior if there is reason to believe that the employee may be working under the influence of drugs or alcohol • Complete Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist.” • Contact the SCO for guidance, if necessary. • Discuss your observations with the employee in an attempt to discover non-substance abuse related reasons for the behavior, symptom, or event. A believable explanation may eliminate the suspicion of drug or alcohol use, but it does not eliminate the need for disciplinary action for a work-related problem.

When confronting employees about suspected substance abuse, denial should be an expected reaction. The employee may give many explanations and protests to avoid a drug or alcohol test or a mandatory referral. In these situations, state that you neither believe nor disbelieve the employee, and that a request for a urine or breath specimen is not an accusation, but rather a request for additional objective data to put any suspicions to rest.

Possible Outcomes from the Discussion with the Employee

IF it is discovered that the employee’s performance is impaired due to the use of prescription drugs or over-the-counter substances,

THEN remove the employee from work duties as described in the [Unable to Perform Duties Safely](#) section of this chapter.

IF the employee voluntarily admits to having a drug or alcohol problem or using in the workplace,

THEN follow the procedures in the [Admitting to Drug/Alcohol Problem or Use in the Workplace](#) section.

IF you do not have enough indicators and documentation that the employee is working under the influence,

THEN continue to observe the employee, document any observations, and warn the employee that if it is subsequently discovered that they are working under the influence, they will be subject to administrative or disciplinary action, up to and including termination.

IF you do have enough indicators and documentation that the employee is working under the influence or had a severe vehicle incident while driving for the department or severe injury,

THEN continue following the procedures below for reasonable cause testing.

- ◆ Immediately contact the SCO by phone if you suspect that an employee is working under the influence of drugs or alcohol. Discuss your observations with the SCO and the results of the discussion that you had with the employee. Document your conversation with the SCO.
- ◆ Fax an initialed copy of Form [2468](#), “Indicators of Alcohol Use,” Form [2469](#), “Indicators of Drug Use,” Form [2470](#), “Indicators of Work Performance Problems,” and Form [2467](#), “Reasonable Cause Determination Checklist” to the SCO as soon as possible after the telephone contact.

When a reasonable cause testing decision is pending and the employee is a real and present danger to personal safety or property, the supervisor is responsible for removing the employee from critical duties. The employee will be reassigned to other duties or required to take his or her own accrued leave until 1) the employee is taken for a reasonable cause test and the results are reported, or 2) 24 hours have passed following the determination that the employee is working under the influence of drugs or alcohol.

The following are procedures for reasonable cause testing:

Reasonable Cause Testing Determination Procedures	
Who	Action
SCO	<ul style="list-style-type: none"> • Discuss with the supervisor the employee’s behavior and the information from the discussion between the supervisor and the employee. • Discuss with the employee, if appropriate. • Call the Substance Abuse Program Staff of HRD to determine whether there is enough justification and documentation to test the employee based on Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist.”
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Review the SCO and supervisor recommendations and all available documentation. • Determine whether there is enough justification and documentation to test the employee based on Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist,” and any other information. • Determine whether or not the employee should be tested for drugs, alcohol or both. • Authorize reasonable cause testing, if appropriate.
SCO	<ul style="list-style-type: none"> • Immediately contact the appropriate DE, applicable member of the Administration, or designee, discuss the observations and your recommendations and the recommendations of the Substance Abuse Program Staff of HRD • Submit Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist” to him or her as soon as possible after the telephone contact.
DE, Applicable Member of the Administration, or Designee	<ul style="list-style-type: none"> • Review the recommendations of the supervisor, SCO and Substance Abuse Staff of HRD and the available information. • Verbally approve or deny the recommendation to test.
SCO	<ul style="list-style-type: none"> • Upon the decision to test, the employee must be removed from critical duties until the drug test results are reported by the MRO. • Document when verbal approval is given by DE, applicable member of the Administration, or designee for a reasonable cause test. • Contact the supervisor when the DE, applicable member of the Administration, or designee gives verbal approval. Be sure to tell the supervisor whether the employee will be tested for drugs, alcohol or both. • Prepare and fax to the supervisor or clinic Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” Contact the clinic to ensure they are aware of the reasonable cause test request. • Initial Form 2467, “Reasonable Cause Determination Checklist” once received from the supervisor. • Forward original Form 2467 “Reasonable Cause Determination Checklist” to the appropriate DE, applicable member of the Administration, or designee for their initials. • Fax or email a copy of Form 2468, “Indicators of Alcohol Use,” Form 2469, “Indicators of Drug Use,” Form 2470, “Indicators of Work Performance Problems,” and Form 2467, “Reasonable Cause Determination Checklist” to the Substance Abuse Program Staff of HRD for initials and retention. • For alcohol tests with a result of .04 or greater or a positive drug test, notify the Coast Guard Officer in Charge, Marine Inspection (OCMI).

Note: Form [2467](#), “Reasonable Cause Determination Checklist,” must be completed with all initials within 24 hours after the incident. All documentation related to making a determination to test must be attached to the Checklist, all of which should be submitted to the Substance Abuse Program Staff of HRD.

Testing Time Limits

Reasonable cause testing for alcohol and drugs must be administered within the specified time periods:

- ◆ **Alcohol** tests must be administered within two hours of the testing determination, but continue to try and administer a test for up to eight hours. No alcohol test will be administered after eight hours have passed.
- ◆ **Drug** tests must be administered within 32 hours of the testing determination. No drug test will be administered after 32 hours have passed.
- ◆ **Note:** If the 2-hour, 8-hour or 32-hour deadlines are not met, the reason(s) must be documented on Form 2467, “Reasonable Cause Determination Checklist.”

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

All reasonable cause testing decisions must be authorized by the Substance Abuse Program Staff of HRD and approved by the DE/DD or applicable member of the Administration, or designee not below the level of Deputy DE, Deputy DD, or Business Services Coordinator prior to administering a reasonable cause test.

§ 7 – Random Testing

Vessel crewmembers will be selected for testing on a random basis in a manner to ensure that each vessel crewmember has a substantially equal chance of selection on a scientifically valid basis. The testing frequency and selection process will be such that a vessel crewmember's chance of selection continues to exist throughout his or her employment as a vessel crewmember. An outside vendor is used to generate the random selections.

At least 10% of vessel crewmembers will be tested annually for alcohol and at least 25% for drugs. Each time random selections are made, they are made from a pool of vessel crewmember shifts. Therefore, every employee who is certified to be randomly tested is on the list, under their shift number, every time a selection is made.

Every employee who was scheduled to work but was absent the shift the random testing was conducted will be tested if they return to work during the monthly testing cycle. Upon the return to work, the employee must be sent to a testing facility that is capable of performing the required tests. A supervisor, lead worker or project leader need only transport the employee to the test site if the employee has previously tested positive or if there is any other reason to suspect a problem with the employee transporting themselves.

Random Testing Procedures

The following procedures should be used when random testing is to be conducted:

Random Testing Procedures	
Who	Action
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> • Toward the end of each month, notify the collection vendor which ferry operation and shift number will be tested and whether the tests will be for drugs or drugs and alcohol. • Notify the SCO of the ferry operation and which shift will be tested and whether the tests will be for drugs or drugs and alcohol.
Collection Vendor	<ul style="list-style-type: none"> • Coordinate with the SCO: <ul style="list-style-type: none"> • the collection site location, • the date and time of the test, and • provide Federal Drug Testing Custody and Control Form.
SCO	<ul style="list-style-type: none"> • Notify supervisors by phone the afternoon before the test date of: <ul style="list-style-type: none"> • the date of the test, • the shift to be tested (employees will be sent to a collection site as soon as they report to work, unless the collections will be done on-site), • attend the random testing, • whether the tests will be for drugs only or drugs and alcohol, and • the collection site location. • Provide a list of employees scheduled for that shift who were not tested. • Notify the next level supervisor if the immediate supervisor is included in the testing. <p>Note: A random test cannot be substituted for an employee’s required return-to-duty or follow-up test.</p>
Supervisor	<ul style="list-style-type: none"> • Notify employees at the beginning of the shift: <ul style="list-style-type: none"> • that they will be tested that day, • whether the tests will be for drugs only or drugs and alcohol, • of the collection site location, and • that they must take photo identification to the collection site. • Notify the SCO of employees who were sent for testing.
Vessel Crewmembers	<ul style="list-style-type: none"> • Report directly to the collection site and return directly to work as soon as collections are completed.
SCO (for on-site collections)	<ul style="list-style-type: none"> • Ensure that employees are not permitted to leave the room or have access to telephones once they have reported to the collection site for testing. • Verify that all employees scheduled for that shift are tested. • Note the reason the employee is not tested on the testing list. • Provide a list of employees scheduled for that shift who were not tested. • Initial the verified amount of employees tested and the employees who were not tested. • Obtain enough Custody and Control forms from the collector to conduct testing for each employee who was not tested. • Coordinate with the supervisor and annotate next to each name the date the employee will return to the workplace. Absent employees must be tested within the month of the original random testing. • Fax: <ul style="list-style-type: none"> • Copy 2 of the Custody and Control Form and the revised random test list to the MRO’s office; • Copy 4 of the Custody and Control Form, the Alcohol Test Forms, and a copy of the revised random test list to the Substance Abuse Program Staff of HRD; • Copy of the revised random test list to Occupational Safety Division. • Provide a copy of the revised random test list to the collector. • Mail original testing documents to the appropriate recipients.

Random Testing Procedures	
Who	Action
SCO (for clinic collections)	<ul style="list-style-type: none"> • Coordinate in advance with the closest collection facility to conduct the required testing on the date indicated for each employee. Ensure each employee will receive the same required testing. • Prepare Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” for each employee to be tested at a clinic collection site. • On the day each employee will be sent to the clinic, fax the Authorization form to OCC. • The collection site is responsible for faxing and mailing the test forms to the MRO and OCC.

Excusing a Vessel Crewmember from Random Testing

An employee must not be excused from the random testing without a valid reason. The only reasons an employee should be excused from random testing list are:

- ◆ the employee is in initial treatment of a mandatory referral;
- ◆ the employee has transferred to another section;
- ◆ the employee no longer qualifies or performs duties as a vessel crewmember for the department;
- ◆ the employee is no longer employed by the department; or
- ◆ the employee will not return to work during the month the original random test was conducted.

If a vessel crewmember reports to work and then feels ill or has a medical emergency after the testing has begun and has to leave work, make every effort to have the vessel crewmember tested before they leave work. The collection vendor will always give vessel crewmembers that are ill or have an emergency priority for testing. If this is not possible, the vessel crewmember should be tested as soon as they return to work.

Alcohol and Drug Tests

Once the employee has been instructed to take an alcohol or drug test, follow the procedures outlined in the [Alcohol and Drug Tests](#) section of this chapter.

Discussing Test Results

Discussions with employees and supervisors about random test results should be done privately. It is not appropriate for anyone to discuss test results with a group, i.e. “We only had one positive the last time out of this group,” especially since this employee may be identified by co-workers. This is a serious breach of confidentiality and may result in disciplinary actions being taken against the employee who shared the information.

Any designee who tells vessel crewmembers about random testing prior to random testing dates will be subject to disciplinary action, up to and including termination.

§ 8 – Alcohol and Drug Tests

Overview

The alcohol and drug testing procedures outlined in this section should be followed when an employee must undergo drug or alcohol testing as required in the Substance Abuse Program Rules.

Alcohol Tests

The following procedures should be used to process alcohol testing that is not done onsite and what actions to take with a positive test result.

Testing Process	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Fill out Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” The Breath Alcohol Technician will provide the employee with a U.S. Department of Transportation (DOT) Alcohol Testing Form at the time of the test. • Transport/send the employee to a collection site and wait for the results of the alcohol test. • Fax a copy of the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.

If Test Results Are 0.02 or Greater, but Less Than 0.04	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Inform employee that they must take their own sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until 24 hours have passed. • Make every effort to ensure that the employee does not drive home. Offer to drive the employee home or to contact someone to pick him or her up at the collection site. • Notify the SCO or supervisor of the test result and the actions you took. • Return the employee to their normal duties after 24 hours have passed from the time the employee was tested.
Collection Site	<ul style="list-style-type: none"> • Fax the test results to the employer.

If Test Results Are 0.04 or Greater	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Inform employee that they must take their own sick leave, vacation leave, compensatory time, or leave without pay, if all accrued leave is exhausted, until 24 hours have passed. • Make every effort to ensure that the employee does not drive home. Offer to drive the employee home or to contact someone to pick him or her up at the collection site. • Notify the SCO or supervisor of the test result and the actions you took. • Immediately remove the employee from critical duties. • Mandatorily refer the employee to the EAP when they report to work after 24 hours have passed. (See the Mandatory Referrals section of this chapter.) • Notify the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI).
Collection Site	<ul style="list-style-type: none"> • Fax the test results to the employer.

Drug Tests

The following procedures should be used to process drug testing and what actions to take with a positive test result:

Drug Tests	
Who	Action
SCO or Supervisor	<ul style="list-style-type: none"> • Fill out Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” • Take a Federal Drug Testing Custody and Control Form with you. • Transport/send the employee to a collection site. • Fax the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.
Collection Site Personnel	<ul style="list-style-type: none"> • Fax Copy 2 of the Custody and Control Form to the MRO’s office; Copy 4 of the Custody and Control Form to the employer.
MRO	<ul style="list-style-type: none"> • Notify the Substance Abuse Program Staff of HRD and the SCO of a positive drug test result in writing or a negative drug test results for all test types.
SCO	<ul style="list-style-type: none"> • Notify the employee’s supervisor of the drug test result. • For a positive test result, notify the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). • Provide a copy of the Coast Guard notification to the Substance Abuse Program Staff of HRD.
Supervisor	<ul style="list-style-type: none"> • Notify the employee of the drug test result. • For positive test results: <ul style="list-style-type: none"> • Immediately remove the employee from critical duties. • Mandatorily refer the employee to the EAP. (See the Mandatory Referrals section of this chapter.)

SCOs can check the drug test notification system for test results. If the drug test results are not available after three days, please contact the Substance Abuse Program Staff of HRD.

Tests results for Port Aransas vessel crewmembers will be report by the MRO to the SCO.

Negative Dilute Drug Test Results

Overview

If a drug test has a negative dilute test result, the employee or final applicant will be directed to take another test.

The second drug test must NOT be collected under direct observation, unless there is another basis for the use of direct observation. Direct observation will only be decided by collection site personnel.

The result of the second drug test becomes the test of record. If the second test has the same result, the employee will NOT be sent for another test.

If the directed final applicant or employee declines to take the second drug test, it is considered a refusal to test. The final applicant will not be hired and the employee will be terminated. Notify the Substance Abuse Program Staff of HRD if a final applicant or employee appears to have refused to test.

Procedures for Negative Dilute Specimens

The following table shows the process for handling negative dilute specimens:

Procedures for Negative Dilute Specimens	
Who	Action
MRO	<ul style="list-style-type: none"> Report the negative dilute test to HRD in writing.
Substance Abuse Program Staff of HRD	<ul style="list-style-type: none"> Notify the SCO of the negative dilute drug test result and the requirement to send/transport the final applicant or employee for the second drug test. The final applicant or employee is given the minimum possible advance notice that they must go to the collection site.
SCO, HRO or Supervisor	<ul style="list-style-type: none"> Complete the Form 2007, “Authorization for Physical Urine Drug Screen and Breath Alcohol Test.” Give the final applicant or employee a Federal Drug Testing Custody and Control Form. Fax the authorization form to the Occupational Safety Division Substance Abuse Office the day of the test.
MRO	<ul style="list-style-type: none"> Notify the Substance Abuse Program Staff of HRD and the SCO of a positive drug test result in writing or a negative drug test result.
SCO or Supervisor	<ul style="list-style-type: none"> Notify the final applicant or employee of the drug test result.

Note: Notification of retest to the SCO or HRO for pre-employment is based on information from the faxed Form [2007](#), “Authorization for Physical Urine Drug Screen and Breath Alcohol Test” that was sent to the Occupational Safety Division Substance Abuse Office.

Chapter 7 – Employee Assistance Program

§ 1 – Introduction

Overview

The department provides an Employee Assistance Program (EAP) and encourages employees to voluntarily use the services of the EAP to deal with alcohol, inhalant, or drug abuse before it affects job performance or safety. Completion of a treatment program may mitigate the need for administrative or disciplinary actions.

Any employee who violates a prohibition found in the [Substance Abuse Program Rules](#) that requires a mandatory referral to the EAP, as discussed in Chapters 1-6 of this manual, will be mandatorily referred to the EAP for assessment and referral to treatment.

Types of Treatment

An EAP counselor shall evaluate a mandatorily referred employee to determine the extent of the dependence upon drugs, alcohol or inhalants and, as may be appropriate, will refer the employee to treatment, which will include one or more of the following:

Inpatient Treatment: An inpatient treatment program provides individual counseling, group therapy, educational services, and aftercare for varying lengths of time. Participants in this type of program will be required to stay at the treatment center while receiving services. They will not be able to work while enrolled in the program.

Intensive Outpatient Treatment Program (IOP): An intensive outpatient treatment program provides individual counseling, group therapy, and educational services for varying lengths of time, normally up to 10 weeks, and also includes aftercare. Most intensive outpatient programs have treatment available on weekends and evenings so employees participating in an outpatient program will normally be able to continue to work while in treatment.

Counseling Program: A counseling program provides education, counseling sessions, or both. The EAP staff, in consultation with the counseling program staff, will prescribe the content, frequency, and duration of these sessions, as appropriate, and may include group or individual sessions for education, counseling, or both.

Qualifications of Counselors

The department has contracted with a very reputable EAP vendor. All EAP Counselors are either:

- ◆ Licensed Physicians (Medical Doctors or Doctors of Osteopathy),
- ◆ Licensed or Certified Psychologists (Texas State Board of Examiners of Psychologists or other regulating board),
- ◆ Social Workers (licensed by the Texas State Board of Social Work Examiners or other regulating board),
- ◆ Employee Assistance Professionals (Employee Assistance Professionals Association, Inc. or other regulating board), or
- ◆ Addiction Counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse or other regulating board) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders, including Substance Abuse Professionals as defined in 49 CFR, Part 40.

These counselors have extensive experience in the area of chemical dependency and are skilled at prescribing appropriate treatment for each individual client depending on his or her needs. In addition, every case is reviewed and monitored by other qualified clinicians to be sure that there is consistent, fair treatment of each employee.

We rely on our EAP vendor to provide these services since we are not professionals in the area of chemical dependency. Therefore, it is not appropriate for any SCO or supervisor to disregard or question a treatment decision or allow employees to think that they can come to an SCO or supervisor and have their treatment plan changed or modified.

EAP Communications

The EAP Counselors/SAP will provide to the department the following information on all mandatory referrals:

- ◆ whether or not the employee needs assistance with resolving problems associated with alcohol or drug use;
- ◆ EAP Counselors/SAP letters;
- ◆ whether or not the employee is able to work while in treatment, the time off work needed and/or specific duties involved in the employee's EAP appointments, evaluations, and treatment;
- ◆ whether the employee is compliant with the EAP's treatment recommendations, including aftercare, on a monthly basis. If the employee is not compliant, why they are non-compliant;
- ◆ when the employee completes initial treatment and before the employee begins aftercare (the EAP will provide a completed return-to-work form at this time);
- ◆ if subject to return-to-duty and follow-up testing, when the employee should be sent for return-to-duty testing and the plan for follow-up testing;
- ◆ when the employee completes all treatment requirements, including aftercare.

Costs

The department will pay for the cost of counseling sessions provided by the EAP, which includes an initial assessment. However, depending on what assistance is needed by the employee to resolve problems associated with alcohol or drug use, the EAP Counselors/SAP will refer the employee to inpatient, intensive outpatient treatment, counseling, or education sessions. The EAP Counselors/SAP will attempt to refer the employee to a treatment provider that is covered by his or her insurance and is within a reasonable driving distance. However, in some cases, the employee may be responsible for incurring additional expenses in order to attend treatment.

Leave for Appointments

Employees may use sick leave, vacation leave, or compensatory time to attend their appointments. Leave without pay may also be used if all other leave is exhausted. It is appropriate to encourage an employee to attend a meeting after work, if an appointment is available, but supervisors shall not attempt to prohibit employees from attending appointments during work hours. If the SCO or a supervisor questions whether an employee is actually going to the EAP or treatment, the SCO may contact the EAP for verification.

§ 2 – Mandatory Referral Process

The Referral

1. The Substance Control Officer (SCO) and supervisor will meet with the employee privately to discuss the reasons the employee is being mandatorily referred to the EAP, the requirements to complete the referral and the mandatory referral process.
2. The employee will be required to sign the Form [2474](#), Mandatory Referral Letter, and will be given a copy.
3. The SCO will call the EAP at 1-866-34TXDOT (866-348-9368). Tell the counselor you are making a TxDOT mandatory referral, the employee's name and social security number, type of employee, reason for the mandatory referral, and any other background information requested by the counselor.
4. The SCO and supervisor should leave the room and allow the employee to talk to the EAP counselor in private to arrange for an initial appointment. Only one employee should be referred at a time.
5. The SCO will fax a copy of the Mandatory Referral Letter along with the employee's job profile to the EAP and the Substance Abuse Program Staff of HRD immediately following the referral call.

Assessment

After steps 1 through 5 are completed, the employee will go to an EAP Counselors/Substance Abuse Professional (SAP) for an assessment to determine if the employee needs assistance in resolving problems associated with alcohol or drug use. At this time, the EAP Counselors/SAP will have the employee sign a release of information (Statement of Understanding) among other forms. This form releases the EAP Counselors/SAP to divulge information regarding the employee's attendance at appointments and compliance with treatment requirements.

Return-to-Duty Testing

The EAP Counselors/SAP will contact the Substance Abuse Program Staff of HRD and fax the follow up evaluation letter and testing plan to advise when an employee has demonstrated compliance with initial treatment and is ready to return to duties. The Substance Abuse Program Staff of HRD will contact the SCO with the information for the return-to-duty test. It is crucial that SCOs verify direct observation for the return-to-duty test and notify the Substance Abuse Program Staff of HRD. The next step of the process (obtaining the completed return-to-work form) is contingent upon the verification of direct observation and the test result.

Return-to-Work Form

The EAP Case Manager will arrange for the completed return-to-work form for all employees who are mandatorily referred to the EAP, after receiving the results of the return-to-duty test, if prescribed. Completed return-to-work forms will be sent to the SCO. Employees must not be allowed to resume critical work duties until a completed return-to-work form is provided.

Note: The EAP does not engage in return-to-work evaluations. The EAP’s role in this step is to route the return-to-work form to the mental health or medical professional and back to the SCO and the Substance Abuse Program Staff of HRD.

Follow-up Testing

The EAP Counselors/SAP will establish a follow-up testing plan for all employees subject to follow-up testing. The Substance Abuse Program Staff of HRD will provide a schedule with time periods and the test type required. The SCO will be responsible for coordinating with the supervisor to decide the exact date to test the employee. The SCO will prepare Form [2007](#), “Authorization for Physical Urine Drug Screen Collection and/or Breath Alcohol Test,” and contact the clinic to ensure a same gender observer is available. The supervisor will provide the custody and control form and ensure the employee is sent for the test.

Aftercare

Aftercare is the second phase in treatment for resolving problems associated with alcohol or drug use in which the employee is transferred to an aftercare team to continue treatment. This phase usually follows inpatient treatment or intensive outpatient treatment, and may consist of weekly counseling sessions, Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) attendance, and follow-up drug and/or alcohol testing. The frequency and duration of these group sessions is designated by the EAP Counselors/SAP. SCOs will be informed when the employee begins aftercare. The aftercare plan is set up by the employee’s EAP Counselors/SAP. An employee has not completed treatment until all aftercare requirements have been completed.

Completion of Treatment

Employees who are mandatorily referred to the EAP will be terminated from the department if they fail to complete treatment. In order to complete treatment, the following requirements must be met:

- ◆ The employee must comply with all treatment recommendations, including aftercare, made by the, EAP Counselors/SAP or any other provider to which they are referred.
- ◆ A completed return-to-work form must be provided when the employee has completed initial treatment and before returning to critical duties.
- ◆ The employee must take and pass all return-to-duty and follow-up tests, if prescribed.
- ◆ A letter verifying completion of treatment is required from the EAP to the SCO and Substance Abuse Program Staff of HRD before the employee is considered to have completed all treatment recommendations.

Non-compliance Letters

Non-compliance means an employee is not following their treatment plan. This subjects the employee to immediate termination for not completing treatment. EAP counselors are fully aware of the consequences involved if an employee does not complete treatment. Therefore, they make every effort to keep employees in compliance with their treatment program.

If an employee is on the verge of non-compliance, the EAP will:

- ◆ attempt to contact the employee several times to try and get them in for appointments,
- ◆ review the case to be sure every effort is being made to keep the employee in compliance, and
- ◆ send the employee a non-compliance warning letter by regular mail and certified mail. The employee will be told to call within 48 hours or a non-compliance letter will be sent to the employer. The letter to the employee will state that non-compliance will result in termination.

If none of these attempts is successful and the employee does not contact the EAP within the allotted time period, a letter will be sent to the employee's SCO advising him or her of the employee's non-compliance. The reasons for non-compliance will also be stated in this letter. Substance Abuse Program Staff of HRD will receive a copy of the non-compliance letter and the letter that was sent to the employee with a copy of the certified receipt.

Non-compliance letters will not be sent based on third party information. A letter will be sent if an employee tests positive on any type of test while in treatment including a return-to-duty or follow-up test.

Sometimes there are good reasons why an employee misses treatment sessions. If there are any extenuating circumstances or problems, it is the employee's responsibility to call the EAP and discuss it. It is not up to an SCO, a supervisor, or the Substance Abuse Program Staff of HRD to determine what excuses are acceptable or ignore an employee's non-compliance because the employee appears to have a "good" excuse. If the EAP says they are non-compliant, they are non-compliant, and the department will terminate the employee.

Chapter 8 – Reporting & Document Retention

§ 1 – Introduction

Overview

The Substance Control Officer (SCO) will be responsible for retaining all confidential records relating to the Substance Abuse Program, which includes training, testing, administrative actions, documentation of post-accident and reasonable cause determinations, consent forms, treatment, appeals, and litigation. All documentation that contains information related to an employee's positive test result, such as documentation of mandatory referrals, should be maintained in a locked file separate and apart from that employee's standard personnel file. All negative test results will be retained for at least three years and all positive test results will be retained for at least five years.

Confidentiality

All information related to the Substance Abuse Program is highly confidential and must be maintained in a locked file separate and apart from the employee's standard personnel file. Access to the files should be limited to authorized personnel who have a need to know the information. No unlocked cabinet, container, or area shall be left unattended. All employer copies of alcohol and drug test results and custody and control forms (CCF) will be maintained by HRD or OCC. If anyone inadvertently receives an employer copy of a custody and control form or a copy of test results, contact the Substance Abuse Program Staff of HRD immediately.

Exceptions

All information relating to a final applicant's or employee's alcohol or drug test, including other medical or personal information contained in testing program records, shall be treated as strictly confidential, with the following exceptions:

- ◆ a proceeding is initiated by the final applicant or employee and the information is relevant to the claim or defense in such proceeding;
- ◆ required by applicable law;
- ◆ requested in writing by the employee;
- ◆ requested by a person bearing the written consent of the final applicant or employee; or
- ◆ required by an office or employee of the department who has a need for the information in the performance of official duties.

Any employee who willfully discloses or releases information in violation of this section will be subject to disciplinary action, up to and including immediate termination from the department.

Information Exchange

- ◆ Notification and disclosure of information may occur through face-to-face, phone, mail, fax, or e-mail contact. Confidentiality must always be maintained.
- ◆ If disclosure of confidential information occurs:
 - through personal contact, care must be taken by the supervisor and the SCO that the disclosure of confidential information takes place in a private area and that confidential information being disclosed is not overheard by unauthorized personnel.
 - by phone, care must be taken to ensure that information is disclosed only to authorized personnel. Both parties will use phone lines which cannot be accessed by a third party. Both parties will disclose confidential information only from private areas where their conversation cannot be overheard. Always confirm and read back test result information to be sure it was heard correctly.
 - by mail, it will be placed in a striped pink envelope marked “Personal and Confidential.” A tamperproof seal may also be used to ensure authorized opening.
- ◆ The BAT and MRO will transmit all test results to the SCO by phone, fax, or face-to-face contact.

§ 2 – Reporting Requirements

SCO Responsibilities

Most of the information required by US DOT will come from documents submitted from collection site personnel, Breath Alcohol Technicians (BAT), or the Medical Review Officer (MRO). However, SCOs must send the information listed in the table below to the Substance Abuse Program Staff of HRD.

Certification Test		
Item	Submit	Keep
Form 1878 , “Commercial Driver Certification”	Fax or Original	Copy
Form 2463 , “Commercial Driver Notification and Receipt of Materials”	Fax or Original	Copy
Form 2237 , “Safety Impact Activities Certification”	Fax or Original	Copy
Form 2464 , “Safety-Impact Employee Notification and Receipt of Materials”	Fax or Original	Copy
Form 2466 , “Vessel Crewmember Certification”	Fax or Original	Copy
Form 2465 , “Vessel Crewmember Notification and Receipt of Materials”	Fax or Original	Copy

Reasonable Cause		
Item	Submit	Keep
Form 2467 , “Reasonable Cause Determination Checklist”	Fax or Original	Copy
Form 2469 , “Indicators of Drug Use”	Fax or Original	Copy
Form 2468 , “Indicators of Alcohol Use”	Fax or Original	Copy
Form 2551 , “Indicators of Serious Accident or Injury	Fax or Original	Copy
Form 2470 , “Indicators of Work Performance Problems”	Fax or Original	Copy
All other documentation of work performance problems or prior actions that were related to the decision to test, including TxDOT Vehicular Accident Reports or Employee’s First Report of Injury or Illness forms	Fax or Original	Copy

Post-Accident Testing		
Item	Submit	Keep
Completed and initialed Post-Accident Determination Checklists for each accident that fits the testing criteria, regardless of whether or not the employee was tested: Form 2475 , for Commercial Drivers or Safety-Impact Employees, or Form 2476 , for Vessel Crewmembers.	Fax or Original	Copy
TxDOT Vehicular Accident Reports or Employee’s First Report of Injury or Illness forms	Fax or Original	Copy
All related post-accident documentation, including police reports and documentation why an alcohol or drug test was not administered	Fax or Original	Copy

Mandatory Referrals		
Item	Submit	Keep
Form 2474 , “Substance Abuse Program Mandatory Referral Letter”	Fax or Original	Copy

Monthly Summary		
Item	Submit	Keep
Form 2477 , “CD/SI/Vessel Crewmember Monthly Summary,” which includes names and employee IDs of all commercial drivers, safety-impact employees and vessel crewmembers who need to be deleted or transferred from one department ID number to another in the drug testing database.	Fax, Copy or E-mail	Original

Additional Documentation		
Item	Submit	Keep
<ul style="list-style-type: none"> Employer’s copy of Drug Testing Custody and Control Forms: Federal Drug Testing Custody and Control Forms Forensic Drug Testing Custody and Control Forms 	Originals if you have any	
<ul style="list-style-type: none"> U.S. DOT Breath Alcohol Testing Form Non-DOT Breath Alcohol Testing Form 	Originals if you have any	
<ul style="list-style-type: none"> Random Testing: Fax Copy 2 of the Drug Testing Custody and Control Form and Personnel Testing List to the MRO. Fax Copy 4 of the Drug Testing Custody and Control Form, Alcohol Test Form and Personnel Testing List to Substance Abuse Program Staff of HRD. Fax Personnel Testing List to OCC. 	Fax within 24 hours Mail Originals	Copy (Personnel Testing List Only)
<ul style="list-style-type: none"> Documentation presented by an employee to dispute the result of an alcohol or drug test 	Original or Copy	
<ul style="list-style-type: none"> Names and related documentation of employees who were terminated for refusing a test or for not complying with their mandatory referral 	Original or Copy	Copy
<ul style="list-style-type: none"> Documentation verifying existence of a medical explanation of the inability of an employee to provide adequate breath or urine for testing 	Employee submits to the MRO	
<ul style="list-style-type: none"> Form 1940, “Conditional Offer of Employment (Commercial Drivers and Vessel Crewmembers) Form 1944, “Request/Consent Form for Release of Alcohol/Controlled Substances Testing Records” Submit only those forms that indicate a positive test, refusal to test or other violations of the DOT regulations. Form 2472, “Notification of Access to Substance Abuse Professionals (SAPs)” 	Original or Copy	Copy

Monthly Summaries

SCOs should submit Form [2477](#), “Commercial Driver/Safety-Impact Employee/Vessel Crewmember Monthly Summary” to the Substance Abuse Program Staff of HRD by the 10th of each month. The purpose of the monthly summaries is to notify the Substance Abuse Program Staff of employees who need to be deleted from the alcohol and drug testing database and employees who need to be transferred in the database.

SCOs who choose to e-mail the monthly reports should include the month and their district’s acronym in the file name (i.e., NOVAUS.DOC).

§ 3 – Substance Abuse Record Retention

The following lists give the periods of retention for records and documents relating to substance abuse:

Pre-Employment Inquiries

Pre-Employment Inquiries		
Item Name	Where to File	Period of Retention
Form 1940 , “Conditional Offer of Employment (Commercial Drivers and Vessel Crewmembers)”	HRO Personnel File	Duration of employment
Form 1944 , “Request/Consent Form for Release Alcohol/Controlled Substances Testing Records”	HRO Personnel File	Duration of employment
Form 1945 , “Release Form from Substance Abuse Professionals for Evaluation/Treatment Records”	HRO Personnel File	Duration of employment
Pre-employment Drug Test results for Vessel Crewmembers	HRO Personnel File	Duration of employment

Certification Information

Certification Information		
Item Name	Where to File	Period of Retention
Form 1878 , “Commercial Driver Certification”	SCO Personnel File	Duration of employment
Form 2237 , “Safety-Impact Activities Certification”	SCO Personnel File	Duration of employment
Form 2466 , “Vessel Crewmember Certification”	SCO Personnel File	Duration of employment
Notification and Receipt of Materials: Form 2463 , Commercial Drivers Form 2464 , Safety-Impact Employees Form 2465 , Vessel Crewmembers	SCO Personnel File	Duration of employment

Reasonable Cause Testing

Reasonable Cause Testing		
Item Name	Where to File	Period of Retention
Form 2468 , “Indicators of Alcohol Use”	SCO Personnel File	5 years
Form 2469 , “Indicators of Drug Use”	SCO Personnel File	5 years
Form 2467 , “Reasonable Cause Determination Checklist”	SCO Personnel File	5 years
Form 2551 , “Indicators of Serious Accident or Injury	SCO Personnel File	5 years
Form 2470 , “Indicators of Work Performance Problems”	SCO Personnel File	5 years
All other documentation of work performance problems or prior actions that were related to the decision to test, including TxDOT Vehicular Accident Reports or Employee’s First Report of Injury or Illness forms	SCO Personnel File	5 years

Post-Accident Testing

Post-Accident Testing		
Item Name	Where to File	Period of Retention
Post-Accident Determination Checklist Form 2475 , for Commercial Drivers or Safety-Impact Employees, or Form 2476 , for Vessel Crewmembers.	SCO Personnel File	5 years
TxDOT Vehicular Accident Reports OR Employee’s First Report of Injury or Illness	SCO Personnel File	5 years
All related post-accident documentation, including police reports and documentation regarding why an alcohol or drug test was not administered	SCO Personnel File	5 years

Mandatory Referrals

Mandatory Referrals		
Item Name	Where to File	Period of Retention
Form 2474 , Substance Abuse Program Mandatory Referral Letter(s)	SCO Personnel File	5 years
EAP Compliance Forms	SCO Personnel File	5 years
Return-to-Work Forms	SCO Personnel File	5 years
Medical Review Officer (MRO) Letters	SCO Personnel File	5 years

Monthly Summary

Monthly Summary		
Item Name	Where to File	Period of Retention
Form 2477 , “Commercial Driver/Safety-Impact Employee/Vessel Crewmember Monthly Summary”	SCO Personnel File	1 year

Additional Documentation

Additional Documentation		
Item Name	Where to File	Period of Retention
Form 2007 , Drug Testing Authorization Forms	SCO Personnel File	Retain until test results are received.
Documentation on Refusals To Test	SCO Personnel File	5 years
Additional Documentation Concerning Substance Abuse Issues	SCO Personnel File	5 years
Form 1945 , “Release Form from Substance Abuse Professionals for Evaluation/Treatment Records”	SCO Personnel File	5 years
Form 2472 , “Notification of Access to Substance Abuse Professionals (SAPs)”	SCO Personnel File	5 years

Appendix

§ 1 – Additional Information on Reasonable Cause

Signs and Symptoms

Examples of Physical and Behavioral Signs and Symptoms

Examples of Physical and Behavioral Signs and Symptoms	
Appearance	Unkempt, blood shot eyes, dilated pupils, puffy face, blank stare
Behavior	Shaking, staggering, poor motor coordination, uncontrollable laughter, “in a daze,” wearing sunglasses, weariness, excessive yawning, nodding off, excessive irritability, depression, anxiety, suspicious of others, suspicious behavior, withdrawn, argumentative, talkative, disregard of self and others, violent
Speech	Slurred speech
Body Odors	Alcohol on breath

Examples of Serious Accident or Injury

Serious Accident or Injury	
Directly Involved – the employee’s order, action or failure to act is determined to be, or cannot be ruled out as a causative factor in the events leading to or causing the accident.	
Directly Involved AND one of the five criteria to the right	<ul style="list-style-type: none"> • Death • Received a citation for a moving traffic violation • Injury to any person other than this employee and the person requires medical treatment beyond first aid • Injury to the TxDOT employee directly-involved in the accident and the employee requires medical treatment beyond first aid • Damage to a vehicle that caused it to be inoperable

Examples of Work Performance Problems

Examples of Work Performance Problems	
Tardiness	Accidents
Attendance	Increased Sick Leave
Productivity	Complaints from Co-workers
Quality of Work	Lack of Attention to Detail
Emotional Changes	Lack of Focus
Missed Deadlines	Promise to Improve Behavior
Unreasonable Excuses	

Other Signs

Other Signs	
Increased Risk Taking	Cries Easily
Abrupt Changes in Work Attendance or Quality of Work	Change of Friends
Borrows Money	Persistent Job Transfers
Series of Personal Crisis: Financial, Marital	Excessive Telephone Use
Irritability/Intense Conflict	Violent or Confrontational
Unexplained Memory Lapses	

Checklist for Discussion with Employee

Below is a checklist for planning and preparing for your discussion with employees who are suspected of working under the influence.

Observed and Documented Behavior and Performance Problems	
Observed employee in a variety of situations and at different times of day	
Wrote down incidents of behavior and poor performance as they occurred	
Was clear and concise about places, dates and times	
Recorded the actual facts that took place	
Discussed this information with those who “need to know”	
Reviewed employee’s work experience, skills, and training	_____
Identified employee’s strengths and weaknesses	_____
Tried to identify other causes for behavior and performance problems	_____
Gave employee advance notice of discussion and the purpose of the discussion	_____
Have scheduled a place that will be private and a period of time away from any interruptions	_____
Reviewed substance abuse policy and procedures	_____
Wrote down resources and phone numbers for my SCO, HRD, the EAP, and/or security	_____
Informed my SCO of the problems and the discussion	_____
Will continue to monitor and document behavior and performance problems as they occur	_____

Tips for Confronting the Employee

Purpose of confrontation is to establish reality with the employee who is currently operating with a different view. Purpose is to improve the employee's behavior and performance problems, which is done by presenting the facts specifically and directly, without emotion, so that the employee clearly understands what is expected and what steps must be taken.

Most Important

Confront performance problems as they occur and do not forget safety!

- ◆ Confront with care.
- ◆ Be sincere.
- ◆ Be supportive.
- ◆ Create an open and friendly discussion.
- ◆ Review the purpose of the discussion.
- ◆ Listen to employee's thoughts and ideas.
- ◆ Try to put the employee at ease so they will feel comfortable talking to you.
- ◆ Discuss job requirements.
- ◆ Discuss the employee strengths. Tell the employee what they do well.
- ◆ When it comes to problem behaviors and job performance, stick to the facts.
- ◆ Give employee examples of incidents including the time and date.
- ◆ Try to discover non-impairment related reasons for behavior and performance problems.
- ◆ Act as a friend but take a clear stand so employee will take discussion seriously.

Do Not Enable

- ◆ Do not ignore poor behavior.
- ◆ Do not fail to document poor behavior.
- ◆ Do not pick up slack for employees.
- ◆ Do not cover up for employees.
- ◆ Do not make decisions based on impressions rather than fact.
- ◆ Do not make threats that you will not carry out.
- ◆ Do not accept unreasonable excuses.
- ◆ Do not make excuses for employees.
- ◆ Do not protect employees from consequences.
- ◆ Do not engage in "heart to heart" talks that will manipulate you.
- ◆ Do not try to "treat" employees.
- ◆ Do not get sidetracked by other issues that have nothing to do with job performance.

Other Mistakes to Avoid

- ◆ Failure to get agreement on expectations of behavior and job performance.
- ◆ Failure to follow-up regularly to observe behavior and see that job performance meets expectations.
- ◆ Ignoring signs of substance abuse until it becomes a crisis.
- ◆ Tolerating substance abuse on the job.
- ◆ Ignoring company policy.
- ◆ Waiting for problem to solve itself.
- ◆ Assuming your employee will not abuse drugs and/or alcohol.
- ◆ Allowing long-term relationships to cloud judgment.
- ◆ Failure to get help from available resources.
- ◆ Failure to support employees who are in rehabilitation.

Basic Communication Rules When Confronting Employees

1. Before responding in conflict or stressful situations, **paraphrase** what you have learned in terms of what was said in terms of both content and feelings.
2. Be an **active listener** – respond physically to speaker by facing the employee and by establishing eye contact. Don't glance around the room or stare off into space. Keep your eyes on the speaker and show that you are genuinely interested in him/her.
3. **Don't interrupt.** Your employees are fully aware that your experience is broader and bigger, and your operation is more involved. But control the urge to offer this valued information. Instead, listen carefully – you might learn something.
4. **Listen without evaluating,** don't try to judge the “goodness” or “badness” of what the other person is saying – just try to see the world as they see it.
5. **Don't project motives** on to other people; in other words, don't attempt to determine why they are telling you what they tell you – just try to understand what they have said.
6. **Use “I” statements** when you speak, but don't just say “I.” Try to think from the “I” position by recognizing that what you say is only your opinion or thoughts and that you cannot speak for other people. Don't beat up on employees by using the company “we” as your army.
7. **Use an affective (feeling) verb** such as “I feel,” “I sense,” etc. Try to get in touch with your own emotions.
8. **Be careful with questions;** don't use them to probe for motives, etc. Only use them to clarify what has been said. Check yourself to see what your motivation is for asking a question. Further in asking questions, stay on the subject, and help the speaker clarify themselves, through the use of questions. It's also a way for the supervisor to guide and control the situation.

Remember Communication is: 65% nonverbal, 25% tone of voice & 10% words!