

**PROCEDURE 407-1**  
**DRUG AND ALCOHOL TESTING**  
Effective 05-01-2021, Resolution No. 014-21

**Administration**

The Department of Human Resources is responsible for administering all drug and alcohol testing programs other than those administered by elected officials for employees of their offices or by the Johnson County Park and Recreation District. Records related to drug and alcohol testing under programs administered by the Department of Human Resources will be maintained solely by the Department of Human Resources.

**New-Testing Programs**

Department/agency/office leaders that determine it is in the interest of Johnson County Government to require employees in safety-sensitive positions to submit to drug and/or alcohol testing not specifically authorized under this procedure must work in consultation with the Legal Department, Department of Human Resources, and Risk Management to determine whether there is a special need to justify drug or alcohol testing, to identify the safety-sensitive positions to be tested, and to develop the testing program. The County Manager will not authorize any drug or alcohol testing program that has not been recommended by the Legal Department. Drug and alcohol testing programs in place prior to the effective date of this procedure do not require immediate approval by the County Manager, but are subject to review by the County Manager.

**United States Department of Transportation (DOT) Regulations**

**Federal Motor Carrier Safety Administration (FMCSA).** The DOT and the FMCSA, an agency of the DOT, have established drug and alcohol regulations specific to employees whose jobs require a commercial driver's license (CDL drivers). Those regulations, which are merely minimum requirements, are incorporated into this procedure and into Human Resources Policy 407. If there is any difference between those regulations and Policy 407 or this procedure, the difference is noted, but Policy 407 and this procedure will control to the greatest extent permitted by law.

The FMCSA requires pre-employment, random, reasonable suspicion, and certain post-accident drug and/or alcohol tests of CDL drivers performing safety-sensitive functions.

**"Safety-sensitive functions"** means the period from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- All time waiting to be dispatched, whether on County property or elsewhere, unless the driver has been relieved from duty and clocked out.
- All time spent inspecting, servicing, or conditioning any commercial motor vehicle including time spent inspecting a vehicle's equipment and safety equipment.
- All time spent in or on a commercial motor vehicle whether driving or otherwise.
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.

- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**Federal Railroad Administration (FRA).** The DOT and the FRA, an agency of the DOT, have established regulations specific to drug and alcohol use by certain railroad employees and drug and alcohol testing of those employees. Those regulations establish minimum requirements applicable to employees of the Johnson County Airport assigned to the New Century Railroad are set forth in the New Century Railroad Part 219 Small Railroad Compliance Plan available from airport management (“Railroad Compliance Plan”). If there is any difference between the Railroad Compliance Plan and Policy 407 or this procedure, Policy 407 and this procedure will control to the greatest extent permitted by law.

The FRA requires pre-employment, reasonable suspicion, certain post-accident, and return to duty and follow-up drug and/or alcohol tests of covered employees. Refer to the Railroad Compliance Plan and this procedure before conducting any drug or alcohol test of a candidate for employment or employee of Johnson County Airport assigned to the New Century Railroad.

### **Pre-employment Testing**

All candidates, including internal candidates, for jobs requiring a commercial driver’s license are required to pass a drug and alcohol test before employment in the job. Candidates may not be subject to pre-employment drug or alcohol testing until they have received a conditional offer of employment. Candidates who test positive for an unauthorized controlled substance will be ineligible for hire for one year unless they provide documentation of successful completion of a substance abuse program

### **Random Testing**

**CDL Drivers.** As required by FMCSA regulations, the County will administer random, unannounced drug and alcohol tests of its CDL drivers on a quarterly basis. The number of such tests administered each calendar year will be the minimum established by the FMCSA for the year. The selection of drivers will be made by a scientifically valid method by using a computer-based random number generator that is matched with the driver’s social security number, payroll number, or other identifying number. Each driver will have an equal chance of being selected each time a selection is made. The selection and testing of drivers will be conducted by a third-party vendor in a manner consistent with all applicable DOT regulations. Random alcohol testing of drivers must occur during or immediately before or after performing safety-sensitive duties.

**FRA-Regulated Employees.** FRA regulations do not permit random drug or alcohol testing of the airport employees assigned to New Century Railroad. Where those employees are also CDL drivers, they will be subject to random drug testing required of CDL drivers.

**Non DOT-Regulated Employees.** Any random drug or alcohol tests of non-DOT-regulated employees will also use a scientifically valid method for selecting employees to be tested to ensure that each driver will have an equal chance of being selected each time a selection is made. The selection and testing of drivers will be conducted by a third-party vendor.

### **Reasonable Suspicion Testing**

The County will relieve an employee from duty and require the employee to submit to drug and alcohol testing when it has reasonable suspicion that the employee has used an unauthorized controlled

substance or alcohol while on duty, is under the influence of an unauthorized controlled substance or alcohol, or has engaged in other conduct prohibited by Policy 407.

***Establishing and Documenting Reasonable Suspicion.*** "Reasonable suspicion" is a belief based on objective facts sufficient to lead a reasonable person to suspect that an employee has committed the prohibited conduct. The suspicion must be based on specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech, or body odors, and, for drugs, indications of chronic use or withdrawal such as:

- Abnormal or erratic behavior (specify the behavior).
- Direct observation of drug or alcohol use, possession, transfer, or sale.
- Physical symptoms and indications including, but not limited to glassy or bloodshot eyes, odor of alcohol or marijuana, slurred speech, and poor coordination.
- The employee's admission of use of an unauthorized controlled substance or alcohol.

When the suspected violation involves alcohol, the observations must be made while the employee is on duty or immediately before or after duty.

If a supervisor reasonably believes that an employee may be under the influence of drugs or alcohol, the supervisor must require the employee to remain on the job site but cease working. The supervisor should request the presence of the department/agency/office leader or other manager or supervisor trained in recognizing the signs and symptoms of drug and alcohol influence to confirm the existence of facts providing reasonable suspicion. **When the suspected employee is a CDL driver** reasonable suspicion must be based on the observations of a supervisor, manager, or department/agency/office leader who has completed at least 60 minutes of training each on alcohol and drug use including the physical, behavioral, speech, and performance indicators of probable alcohol misuse and drug use. If the supervisor lacks the required training to make the determination, they must call a properly trained department/agency/office leader or other manager or supervisor to observe the driver and make the determination. The basis for reasonable suspicion testing for both CDL drivers and other employees must be documented and signed by the individual who made the observations as soon as practicable, but at least within 24 hours of the observed behavior or before the results of the drug/alcohol test are released, whichever is earlier.

***Timing.*** If a drug or alcohol test has not been administered within two hours of the determination of reasonable suspicion, the supervisor or manager must document the reason for the delay. If an alcohol test is not administered within eight hours, it may not be administered at all and the supervisor or manager must document the reason the test was not administered. If a drug test is not administered within eight hours, Department of Human Resources approval is required prior to the test.

***Procedure.*** During normal business hours the supervisor or manager who made the reasonable suspicion determination must contact the Department of Human Resources to arrange for the employee to submit to drug and alcohol testing. After normal business hours, the supervisor or manager must contact the designated 24/7 collection site to arrange for testing. If testing is done off-site, the supervisor or the Department of Human Resources will arrange for transportation of the employee to and from the test site. Contact information for the designated collection sites: <https://jocogov.sharepoint.com/SitePages/Claims.aspx>.

If the employee is not a CDL driver or subject to testing under the Railroad Compliance Plan, the County representative making the referral must inform the collection site that the drug and alcohol tests are being conducted under County policy.

If the employee is a CDL driver or is subject to the Railroad Compliance Plan, the County representative making the referral must inform the collection site that the employee is being tested under DOT authority and County policy. The employee will be required to provide a separate sample for the County drug test and must remain at the collection site until the second sample has been collected. A non-DOT alcohol test cannot be conducted unless the employee's DOT alcohol test result was reported as negative (alcohol concentration of less than .02) and the employee continues to exhibit symptoms of alcohol use.

The employee will be placed on administrative leave pending results of the drug and alcohol tests. DOT regulations require the driver to remain off duty until the driver's alcohol concentration measures less than 0.02 or until 24 hours have passed since the determination of reasonable suspicion. The DOT regulations are minimum requirements. Under County policy, the driver may be removed from duty permanently or for such period of time as the County deems reasonable regardless of the employee's alcohol concentration.

### **Post-Motor Vehicle Accident Testing**

Any individual who is subject to post-motor vehicle accident testing must remain readily available for such testing or may be deemed to have refused to submit to testing. This requirement shall not be construed to require the delay of necessary medical attention for anyone injured in the accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. The health and safety of County employees and the public are always the first and foremost consideration.

For purposes of this procedure, the following definitions apply:

**"Motor vehicle"** does not include lawn and landscaping equipment, but does include motor vehicles that are not required to be licensed for operation on a public road but are operated both on County premises and public roads such as motor graders, front-end loaders, backhoes, excavators, track-hoes, and tractors.

**"Regular motor vehicle operator"** means a CDL driver and any other employee designated as a primary or intermediate driver.

**"Serious bodily injury"** means bodily injury requiring anyone involved to receive immediate medical treatment away from the scene.

**"Serious vehicle damage"** means damage to any vehicle requiring the vehicle to be towed or otherwise transported from the scene.

**CDL Drivers.** Under FMCSA regulations, CDL drivers performing safety-sensitive functions with regard to a commercial motor vehicle involved in an accident while operating on a public road must submit to post-accident drug and alcohol tests under the following circumstances:

- Where the accident involves a fatality, all CDL drivers performing any safety-sensitive function with respect to the commercial motor vehicle involved must submit to drug and alcohol testing regardless of whether they were driving at the time of the accident.
- Where the CDL driver receives a citation within 8 hours of an accident resulting in either serious bodily injury or serious vehicle damage, the driver must submit to drug and alcohol testing.
- Where the CDL driver receives a citation between 8 and 32 hours after an accident resulting in either serious bodily injury that or serious vehicle damage the driver must submit to drug testing.
- DOT drug and alcohol testing is not required where the accident involves only boarding or getting off of a nonmoving vehicle or loading or unloading cargo.

**Regular Motor Vehicle Operators.** Following a motor vehicle accident while on duty or while operating a County motor vehicle on or off duty, regular motor vehicle operators must submit to drug and alcohol tests under the following circumstances:

- Where a drug and/or alcohol test would be required for a CDL driver regardless of whether the employee is a CDL driver.
- Following any other accident where, in the opinion of the supervisor, manager, Human Resources, or Risk Management, the employee's conduct caused or cannot be completely discounted as a contributing factor to the accident.

**All Motor Vehicle Operators.** Any employee involved in an on-duty motor vehicle accident or an off duty motor vehicle accident in a County vehicle will be required to submit to drug and alcohol testing where there is reasonable suspicion that the employee is in violation of the Drug-Free and Alcohol-Free Workplace Policy.

**Exceptions.** Departments/agencies/offices may establish written rules authorizing designated supervisors or managers to waive drug or alcohol testing where (1) the supervisor or manager determines that snow, ice, or another weather event was the primary cause of the accident, (2) the accident did not result in a fatality, serious bodily injury, or serious vehicle damage, (3) the employee did not receive a citation for a moving violation, and (4) the designated supervisor or manager does not have reasonable suspicion that the driver was under the influence of drugs or alcohol at the time of the accident or had used drugs or alcohol within four hours prior to the accident.

**Timing.** Drug and alcohol tests should be administered as soon as practicable, but no later than eight hours after the accident except where DOT regulations require otherwise. The employee's supervisor or manager must document the reason the tests were not administered in a timely manner. If an alcohol test is not administered within eight hours, it may not be administered at all and the supervisor or manager must document the reason the test was not administered. If a drug test is not administered within eight hours, Department of Human Resources approval is required prior to the test. **Employees may not consume alcohol for eight hours following any motor vehicle accident unless both DOT and non-DOT drug and alcohol tests have been completed.**

**Procedure.** Unless physically incapable, the employee must immediately report the accident to their supervisor or manager. The supervisor or manager must immediately notify Risk Management during normal business hours and after normal business hours if the accident involves a fatality, serious bodily injury, or serious vehicle damage. If the employee is transported to an emergency room, the supervisor or manager will contact the designated 24/7 collection site to arrange for testing. In all other cases, during

normal business hours tests will be conducted at the County's designated collection site or primary care clinic, depending upon whether the employee requires medical evaluation or treatment. After hours, the supervisor or manager will contact the designated 24/7 collection site to arrange for medical evaluation and care if necessary and for drug and alcohol testing. Contact information for the designated collection sites: <https://jocogov.sharepoint.com/SitePages/Claims.aspx>.

If there is reasonable suspicion that the employee used alcohol or an unauthorized controlled substance within four hours of the accident or may be under the influence of either, the supervisor/manager must arrange for the employee's transportation to and from the test site. The employees will be placed on administrative leave pending results of the drug and alcohol tests.

If the drug and alcohol tests are not required by FMCSA reasonable suspicion or post-accident regulations, the County representative making the referral must notify the collection site that the employee is being tested under County policy.

If the drug and alcohol tests are required by FMCSA reasonable suspicion or post-accident regulations, the County representative making the referral must inform the collection site that the employee is being tested under DOT authority and County policy. The employee will be required to provide a separate sample for each drug test and must remain at the collection site until the second sample has been collected. A non-DOT alcohol test cannot be conducted unless the employee's DOT alcohol test result was negative (alcohol concentration of less than .02) and the employee continues to exhibit symptoms of alcohol use.

### **Testing Procedures**

The Department of Human Resources and/or the Risk Management Division of the Department of Financial Management & Administration will contract with third party vendors to perform drug and alcohol testing and with a licensed physician or registered nurse practitioner with knowledge of substance abuse disorders to serve as a Medical Review Officer.

The County, under its own authority, may test for any substance identified as a controlled substance under federal or Kansas law. DOT-required drug tests are limited to marijuana, cocaine, opioids, amphetamines, phencyclidines, and any other drug for which the DOT may later require or authorize testing. Where a DOT test is required, the County will also require the driver to provide a second specimen which it will test for other controlled substances. Unless otherwise required by DOT regulations, tests for the presence of controlled substances will be conducted by the analysis of saliva or urine.

To ensure accuracy and fairness, all drug testing will be administered by a third-party vendor and conducted according to HHS/SAMHSA guidelines and will include a screening test, a confirmation test, a split sample, review by a Medical Review Officer (MRO) including the opportunity for employees who test positive to provide a legitimate medical explanation for the positive result, the opportunity to test the split sample following a positive test result, and a documented chain of custody. The MRO will report the test results to a Designated Employer Representative (DER), who shall be an employee of the Department of Human Resources. Only verified positive test results will be reported by the MRO. The DER will advise the employee, the employee's department/agency/office, and, for post-accident testing, Risk Management of confirmed positive test results. The DER will consult with the employee's department/agency/office leader regarding corrective action and/or other required action.

All DOT-required alcohol tests will be administered by a breath alcohol technician (BAT) using an evidential breath testing device (EBT) whenever possible although other test methods approved by the DOT may be used when necessary. The BAT will administer a screening test, and if the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test will be administered. Only the verified test result of 0.02 or greater will be reported to the County. Alcohol testing that is not required by DOT regulation will be conducted in a manner consistent with the guidelines for alcohol testing issued by the Kansas Department of Health and Environment or by the United States Department of Transportation (DOT). A non-DOT alcohol tests, an alcohol concentration greater than 0.00 will be reported to the DER.

## **Test Results and Follow Up Tests**

***DOT Minimum Requirements.*** Under DOT regulations, a CDL driver whose alcohol concentration is greater than 0.02 but less than 0.04 may not return to duty until the later of 24 hours following administration of the alcohol test or the driver's next regularly scheduled duty period. In all other cases where a driver has engaged in any prohibited conduct concerning alcohol, the driver may not return to duty until they have undergone a return-to-duty alcohol test with an alcohol concentration of less than 0.02. CDL drivers who test positive for unauthorized controlled substance or whose alcohol concentration measured 0.04 or greater may not return to work until they have been evaluated by a substance abuse professional (SAP), have successfully completed any recommended treatment, and have completed a return-to-duty test which is negative for unauthorized controlled substances and which has an alcohol concentration below 0.02.

***County Policy.*** Any employee who violates Policy 407, who tests positive for any detectable level of an unauthorized controlled substance, or whose alcohol concentration upon testing was in excess of 0.00 may be subject to corrective action up to and including separation from employment. The County will not be limited by the minimum requirements of the DOT regulations. In addition, or in the alternative, and at the County's sole discretion, the employee may be referred to a substance abuse professional for assessment and recommendations and required to successfully complete recommended treatment, pass a return-to-duty drug and alcohol test (0.00 alcohol concentration), and sign a Return-to-Work Agreement, which will include random follow up drug and alcohol testing recommended by the substance abuse professional or otherwise required by the County for a period of up to 2 years (up to 5 years for DOT-regulated employees with at least six tests within the first 12 months), as conditions for returning to work. A Return-to Work Agreement merely establishes expectations for returning to work and does not guarantee continued employment or change any employee's status as an employee at will.

## **Marijuana and Cannabidiol (CBD) Products**

Use of marijuana for any reason remains illegal under federal law and under Kansas law. A medical marijuana prescription from another state, use of recreational marijuana in a state where it is legal, or use of CBD products, whether legal or not, will not excuse an employee from the consequences of a failed drug test. Employees are not prohibited from using CBD products as allowed under Kansas law but are responsible for ensuring that any CBD products they use do not contain THC.

## **Refusal to Test and Test Tampering**

Refusal to submit to a test is the equivalent of failing the test. Refusal to submit to a test includes failure to appear at the time and place required, failure to remain on site as directed, failure to complete the test, failure to provide an adequate specimen without sufficient medical explanation, failure to provide a second specimen where required, refusal to sign a consent form or otherwise cooperate in the testing

process, providing a substitute or adulterated specimen, and any other attempt to affect the test results. An employee who tests negative for controlled substances but whose specimen is diluted will be required to retest.

### **Questions and Assistance**

Questions regarding this procedure and requests for additional information regarding drug and alcohol use should be directed to the Human Resources partner assigned to the employee's department/agency/office. Employees are encouraged to utilize the Employee Assistance Plan for assistance with drug and alcohol dependence.