

For-cause Drug and Alcohol Testing Program .....	1
I. Definitions .....	1
A. Affected Employees.....	2
B. For-cause (40 O.S. § 554) .....	2
C. Prohibited Conduct .....	2
D. Drugs (40 O.S. § 552.6.) .....	3
E. Medical Review Officer (MRO) (40 O.S. § 552.11.).....	3
II. Pre-Testing Requirements/Notice of Testing Procedures .....	3
III. Testing Methods and Collection Procedures .....	3
A. Alcohol.....	4
B. Drugs.....	4
IV. Testing Protocol.....	5
A. Coordinators.....	5
B. For-cause Drug/Alcohol Testing .....	6
C. Test Results.....	7
V. Post Testing Procedures.....	7
A. Employee Challenge of Test Results.....	7
B. Human Resources Actions .....	8
VI. Confidentiality of Records .....	8
A. Maintenance of Records.....	8
B. Release of Records .....	9
VII. References.....	9
VIII. Action .....	10
Attachments.....	11

<b>Section-11 Human Resources</b>	<b>OP-110602</b>	<b>Page: 1</b>	<b>Effective Date: 04/30/2019</b>
<b>For-cause Drug and Alcohol Testing</b>	<b>ACA Standards: 2-CO-1C-20, 4-4063, 4-ACRS-7C-02, 4-APPFS-3C-01</b>		
<b>Joe M. Allbaugh, Director Oklahoma Department of Corrections</b>		<b>Signature on File</b>	

## **For-cause Drug and Alcohol Testing Program**

This procedure, in compliance with the “Standards for Workplace Drug and Alcohol Testing Act” (40 O.S. § 551 et seq.), is established in support of a drug-free workplace and a “zero tolerance” standard for any use of drugs or alcohol by employees which may jeopardize the agency’s ability to maintain a safe work environment and fulfill its mission. (2-CO-1C-20, 4-4063, 4-ACRS-7C-02, 4-APPFS-3C-01)

Employees are prohibited from any use of drugs or alcohol that may impair their abilities to perform their job duties or discharge their responsibilities.

For the purpose of this procedure, the term “facility” will apply to institutions and community corrections centers, the term “facility head” will apply to wardens and community corrections centers directors and the term “unit head” will apply to unit directors and probation and parole deputy directors.

### **I. Definitions**

A. Affected Employees

All classified and unclassified, permanent or probationary, full or part-time employees or employees under contract are subject to for-cause testing in accordance with this procedure. Volunteers or other non-compensated persons may not be tested (40 O.S. § 552.8.).

B. For-cause (40 O.S. § 554)

The agency may request or require an employee to undergo drug or alcohol testing at any time it reasonably believes that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

1. Drugs or alcohol on or about the employee's person or in the employee's vicinity;
2. Conduct on the employee's part that suggests impairment or influence of drugs or alcohol;
3. A report of drug or alcohol use while at work or on duty;
4. Information that an employee has tampered with drug or alcohol testing at any time;
5. Anytime a drug detection canine alerts on an employee;
6. Negative performance patterns; or
7. Excessive or unexplained absenteeism or tardiness.

C. Prohibited Conduct

Prohibited conduct is defined as:

1. Any confirmed positive test for drugs which has been reviewed and verified by the medical review officer (MRO) for which there is no medically acceptable explanation of the positive result other than the use of drugs and which is either unchallenged or reconfirmed by a test of the split specimen;
2. Any positive test result for alcohol at a level of .04% or greater;
3. Any refusal to submit to testing or conduct which interferes with, or obstructs the testing process including: any unreasonable delay in reporting to the collection site; any attempted adulteration or substitution of a sample; or any failure to produce a sample within three hours after requested; or

4. Any test result received from the MRO indicating a refusal to test, including verification of an adulterated or substituted sample, which is either unchallenged or reconfirmed, by a test of the split specimen.

D. Drugs (40 O.S. § 552.6.)

Include the following: amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein.

E. Medical Review Officer (MRO) (40 O.S. § 552.11.)

A person with whom the agency contracts who is qualified by the State Board of Health who receives results from a testing facility and who has knowledge and training to interpret and evaluate an individual's test results together with the individual's medical history and any other relevant information.

II. Pre-Testing Requirements/Notice of Testing Procedures

Employees will be provided notification of this procedure or any revisions at least 10 days prior to implementation by posting of the policy on the ODOC website (40 O.S. § 555.B.).

- A. A notice advising employees that the agency's policy statement regarding for-cause drug and alcohol testing, [P-110300](#) entitled "Drug-Free Workplace Program" and this procedure is available on the agency's website and will be posted at the human resources office (40 O.S. § 555.B.).
- B. All employees will sign a receipt for a copy of this procedure during the enrollment process and following any subsequent issuance containing substantive changes. [Attachment A](#) entitled "Acknowledgment of Receipt" will be filed in the employee's personnel file.

III. Testing Methods and Collection Procedures

The agency will contract for all drug and alcohol collections and testing. The persons/testing facilities will meet the qualifications and standards established by Oklahoma statute and the State Board of Health (40 O.S. § 557) and will be licensed by the State Department of Health (40 O.S. § 558). No agency employee will be permitted to conduct drug and alcohol testing of another employee.

All testing will consist of an initial screening test followed by a confirmation test in the event the initial screening test result is positive.

A. Alcohol

1. An Evidential Breath Testing device (EBT) will be used to conduct all screening and confirmation tests for breath alcohol concentration (BRAC).
2. Screening Results
  - a. If the BRAC is less than .02%, no further testing is authorized.
  - b. For any BRAC results of .02% or higher, a second (confirmation) EBT test will be conducted.
3. Following completion of a test, the employee will be shown the results displayed on the EBT. The original test result printout will be taken by the designated driver back to the human resource management specialist (HRMS) who will email a copy to the Central Human Resources Unit to the attention of the agency drug-free workplace coordinator. A copy of the test result printout will be provided to the employee. No copy of the test results will be placed in the employee's personnel file.

B. Drugs

1. Samples for urinalysis will be collected in sufficient quantity for splitting into two separate specimens to provide for subsequent independent analysis in the event there is a challenge to the test of the main specimen (40 O.S. § 559.4.).
2. Direct observation of an employee in the process of producing a sample is prohibited unless otherwise permitted under rule or law (40 O.S. § 559.5.).
3. All positive results to an initial screening test (immunoassay) will be confirmed using gas chromatography, gas chromatography-mass spectroscopy methods or a scientifically equivalent technique (40 O.S. § 559.8.).
4. Employees will have an opportunity to provide any information which the employee considers relevant to the test, including identification of currently or recently used prescription or non-prescription drugs (40 O.S. § 559.6.b). Such opportunity will be provided, if the need arises, when the employee is contacted by the MRO.
5. All samples will be properly labeled, stored and transported and a written chain of custody will be maintained (40 O.S. § 559.6.a, 559.7., and 559.9.).

6. The agency will not consider the results of any unauthorized testing.
7. Employees will be sent for additional testing for any test results received as “negative and dilute” or “unsuitable sample.”
8. Medicinal marijuana restrictions will be in accordance with OP-110603 entitled “Pre-Employment Drug Testing Program.”

#### IV. Testing Protocol

##### A. Coordinators

###### 1. Agency Coordinator

The Central Human Resources Unit will coordinate drug-free workplace testing and will furnish each facility/unit a list of the vendor’s collection sites and the name of the MRO.

###### 2. Local (facility/unit) Drug-Free Workplace Coordinators

The human resource management specialist (HRMS) or human resources representative for the facilities/units will normally serve as the drug-free workplace coordinators.

Coordinator responsibilities will include:

- a. Maintaining the list of approved sites and alternate 24 hour sites as distributed from Central Human Resources Drug-Free Workplace Coordinator.
- b. Notifying the collection site to expect the employee prior to transporting the employee to report for testing;
- c. Ensuring the employee is provided the appropriate forms and instructions for reporting for drug testing;
- d. Forwarding any invoices or test results received and reporting any problems with the collection sites to the central Human Resources Unit to the attention of the agency drug-free workplace coordinator;
- e. Conducting annual evaluations of the designated collection sites within each respective area and forwarding completed site evaluations on the “Collection Site Evaluation Form” ([OP-110603](#), [Attachment B](#)) to the Central Human Resources Unit to the attention of the agency drug-free workplace coordinator by the 15<sup>th</sup> of the evaluation month; and

- f. Assisting the MRO in contacting the employee for purposes of verification. When contacted by the MRO, coordinators must:
- (1) Make a minimum of three attempts, spaced reasonably apart during the 24 hour period following receipt of a request from the MRO for assistance. The dates and times of all attempts or contact must be documented;
  - (2) If personal contact is made, the employee will be advised to contact the MRO immediately and that failure to contact within 72 hours will result in a report for a positive test;
  - (3) If attempts at personal contact fail, this information will be provided by a practical alternative means (e.g., voice mail, e-mail, letter);
  - (4) Notify the MRO of the date and time that either personal contact was made or a message was provided to the employee; and
  - (5) Maintain the confidentiality of these activities.

B. For-cause Drug/Alcohol Testing

1. For-cause Report Form

Before directing an employee to test for drugs or alcohol under this procedure, the facility/unit head (or designee) must establish reasonable belief that the employee may be under the influence of drugs or alcohol by completing [Attachment B](#) entitled "For-cause Report Form" (attached). All supervisors/managers with responsibilities for determining whether reasonable suspicion exists in order to require testing must receive training sponsored by the Central Human Resources Unit including 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substances use. The facility/unit head must have completed for-cause training directly pertaining to drug/alcohol abuse as offered by the Central Human Resources Drug-Free Workplace Coordinator prior to making any determination for-cause. A copy of the form must be immediately emailed to the agency drug-free workplace coordinator.

2. Test Administration Form

Following the establishment of a reasonable belief that the employee may be under the influence of drugs or alcohol, the employee will be immediately transported/accompanied to the local collection site. If

the local site is closed or it is after hours a facility will need to be selected from the 24 hour site list. The facility/unit will complete an "Authorization for Examination and Testing" form ([Attachment C](#), attached). The form must indicate that the test is "for-cause." Based on the reasonable belief articulated in [Attachment B](#), a drug test and alcohol test will be ordered. The original "Authorization for Examination and Testing" form must be taken to the test site with the employee and a copy of the form must be immediately emailed to the agency drug-free workplace coordinator.

3. Time/Cost/Transportation

- a. Any employee required to undergo for-cause testing will be immediately relieved of all assigned weapons. Weapons will be secured as determined by the facility/unit head.
- b. The facility/unit will ensure that the employee to be tested is transported/accompanied to the collection site. A state vehicle will be provided for transportation to and from the collection site. If a state vehicle is not available, the state will provide reimbursement to an uninvolved employee for mileage to transport the employee to be tested to and from the collection site in accordance with the State Travel and Reimbursement Act (40 O.S. § 556). Under no circumstance will the employee to be tested be allowed to drive to the collection site.
- c. All testing will occur immediately after the for-cause report form has been completed and signed. Time used for the testing will be considered work time (40 O.S. § 556).
- d. The agency will pay for the cost of any test the employee is directed to take under this procedure.

C. Test Results

The Central Human Resources Unit will forward the test results to the facility/unit HRMS who will then provide the results to the appropriate authority at the site.

V. Post Testing Procedures

A. Employee Challenge of Test Results

1. An employee may request that the MRO have the split specimen tested by a second laboratory within 72 hours of receiving notification from the MRO of a verified confirmed drug test result that is positive, adulterated or substituted.
  - a. The employee is responsible for the cost of this test.

- b. Should the results fail to confirm the results of the primary specimen; the agency will reimburse the employee for the cost of the test.
2. No result from split specimen testing, which is conducted due to a request from an employee, occurring more than 72 hours after MRO notification will be accepted.

## B. Human Resources Actions

### 1. Pending Test Results

#### a. Suspension With Pay

Employees will be placed on suspension with pay pending the agency's receipt of test results in accordance with Merit Rules and [OP-110415](#) entitled "Progressive Disciplinary Procedures" (Merit Rule 260:25-11-120).

#### b. Return To Work

Employees will be returned to work:

- (1) Following a BRAC of less than .02%;
- (2) 24 hours after a BRAC of .02% or greater but less than .04%; or
- (3) Following a negative drug test.

### 2. Disciplinary Response

The agency will terminate any employee who engages in conduct prohibited under this procedure. All terminations will be in accordance with [OP-110415](#) entitled "Progressive Disciplinary Procedures" and applicable Merit Rule.

## VI. Confidentiality of Records

### A. Maintenance of Records

All drug and alcohol test results and related material will be held as confidential and maintained in the Central Human Resources Unit for a period of five years for a positive result and one year if the test was negative. Drug test results and related material will not be filed in the employee's personnel file. Disposal of test result records will be in accordance with [OP-020202](#) entitled "Management of Office Records."

B. Release of Records

Records of drug and alcohol testing will be used or released only:

1. For the purpose of any action taken by the agency or in any action involving the employee tested and the agency (40 O.S. § 560.B.1.);
2. Pursuant to a valid judicial or administrative order (40 O.S. § 560.B.2.);
3. To the employee or applicant upon the employee's written request (40 O.S. § 560.A.); or
4. To an employer's employees, agents and representatives who need access to such records in the administration of the Standards For Workplace Drug and Alcohol Testing Act (40 O.S. § 560.B.3.).

VII. References

Policy Statement No.P-110300 entitled "Drug-Free Workplace Program"

OP-020202 entitled "Management of Office Records"

OP-110415 entitled "Progressive Disciplinary Procedures"

OP-110603 entitled "Pre-Employment Drug Testing Program"

40 O.S. § 551 et seq

40 O.S. § 552.6.

40 O.S. § 552.8.

40 O.S. § 552.11.

40 O.S. § 554

40 O.S. § 555.B

40 O.S. § 556

40 O.S. § 557

40 O.S. § 558

40 O.S. § 559.4.

40 O.S. § 559.5.

40 O.S. § 559.6.b

<b>Section-11 Human Resources</b>	<b>OP-110602</b>	<b>Page: 10</b>	<b>Effective Date: 04/30/2019</b>
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40 O.S. § 559.6.a, 559.7., and 559.9.

40 O.S. § 560.A.

40 O.S. § 560.B.1.

40 O.S. § 560.B.2.

40 O.S. § 560.B.3.

49 CFR § 40 and 382

Merit Rules 260:25-11-120

VIII. Action

The unit head is responsible for compliance with this procedure.

The director of Administration is responsible for the annual review and revisions.

Any exceptions to this procedure will require prior written approval from the agency director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-110602 entitled "For-cause Drug and Alcohol Testing Program" effective November 28, 2017

Distribution: Policy and Operations Manual  
Agency Website

<u>Attachments</u>	<u>Title</u>	<u>Location</u>
<a href="#">Attachment A</a>	"Acknowledgment of Receipt"	Attached
<a href="#">Attachment B</a>	"For-cause Report Form"	Attached
<a href="#">Attachment C</a>	"Authorization for Examination and Testing"	Attached
<a href="#">Attachment B</a>	"Collection Site Evaluation Form"	<a href="#">OP-110603</a>