

# New Kent

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## **CDL Drug & Alcohol Policy**

## INTRODUCTION

It is the policy of New Kent County (herein referred to as the “County”) that the use, sale, purchase, transfer, possession, or presence in one’s system of any controlled substance (except medically prescribed drugs) by any employee while on the County’s premises, engaged in County business, operating County equipment, or while under the authority of the County is strictly prohibited.

The County further maintains a policy that the unauthorized use, sale, purchase, transfer, possession, or presence in one’s system of alcohol or any other intoxicating agent by any employee while on the County’s premises, engaged in County business, operating County equipment, or while under the authority of the County is strictly prohibited.

There are many reasons why we have implemented a drug and alcohol testing program, they include but are not limited to:

- Deter employees from abusing alcohol and drugs
- Prevent hiring individuals who use illegal drugs
- Be able to identify early and appropriately refer employees who have drug and/or alcohol problems
- Provide a safe workplace for employees
- Protect the general public and instill consumer confidence that employees are working safely
- Benefit from Workers’ Compensation Premium and Group Discount programs
- Comply with State, Federal and Local laws and regulations

Aspects of the County’s operations are subject to regulation by various federal, state and local agencies, therefore certain County employees are subject to the terms and conditions of this Drug and Alcohol Policy, the terms and conditions of which are hereby incorporated within the CDL Drug and Alcohol Policy. The serious impact of drug use and alcohol abuse has been recognized by the federal government. Consequently, the Federal Motor Carrier Safety Administration (FMSCA) has issued regulations which require the County to enhance its alcohol and controlled substance program. This is a “Supplemental” or addition to the New Kent County Personnel Policies and Procedures Manual, it is meant to educate the County’s employees about this enhanced program with the focus on drug and alcohol testing.

It is the County’s intent that the policies and procedures in this Drug and Alcohol Policy be consistent with provisions contained in the New Kent County Personnel Policies and Procedures Manual. In the unlikely event that the terms of this Drug and Alcohol Policy conflict with any provision contained in the Employee Handbook, the terms and conditions of this Drug and Alcohol Policy shall control. Violation of any provision contained in this Drug and Alcohol Policy shall be deemed a violation of the County’s overall drug and alcohol policy and will result in disciplinary action, up to and including termination.

**NEITHER THIS POLICY NOR ANY OF ITS TERMS ARE INTENDED TO CREATE A CONTRACT OF EMPLOYMENT OR CONTAIN THE TERMS OF ANY CONTRACT OF EMPLOYMENT. THE COUNTY RETAINS THE SOLE RIGHT TO CHANGE, AMEND, OR MODIFY ANY TERM OR PROVISION OF THIS POLICY WITH OR WITHOUT NOTICE.**

**PLEASE BE ADVISED THAT THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS (“FMCSR”) SET THE MINIMUM REQUIREMENTS FOR TESTING OF SAFETY SENSITIVE EMPLOYEES. THE COUNTY’S POLICY IN CERTAIN INSTANCES MAY BE MORE OR LESS STRINGENT FOR OTHER EMPLOYEES.**

### **For More Information About DOT Requirements or Our County Policy**

Contact the County's Human Resources and Safety Coordinator (804) 966-8512. As of the date of issuance of this D&A Policy, the County's Human Resources and Safety Coordinator is Karen Wiscott. This person also serves as the County's role of Designated Employer Representative (DER).

### **CONFIDENTIALITY/RECORDKEEPING**

All employee drug and alcohol test records are considered confidential. For the purpose of this policy/procedure, confidential recordkeeping is defined as records maintained in a secure manner, under lock and key, accessible only to designated employees.

Employee alcohol and controlled substance test records will only be released in the following situations:

- To the active employee, upon their request;
- Upon written consent by the employee authorizing the release to a specified individual;
- Upon request of a DOT agency with regulatory authority over the County;
- Upon request of state or local officials with regulatory authority over the County;
- Upon request of the United States Secretary of Transportation;
- Upon request by the National Transportation Safety Board (NTSB) as part of an accident investigation;
- In a lawsuit, grievance, or other proceeding when legally applicable;
- Upon request by subsequent employers upon receipt of a written request by an employee;
- To the DOT recognized National Drug & Alcohol Clearinghouse for truck and bus drivers.

It should be noted that beginning January 2020, all DOT drug and alcohol positives and refusals will be reported to the federal Drug and Alcohol Testing Clearinghouse as required by law. Also refer to this subsection following for further information.

### **EMPLOYEE CATEGORIES SUBJECT TO TESTING**

This Supplemental Drug and Alcohol Policy applies to all commercial driver's license (CDL) driving employees, including, but not limited to,

1. Utility Foreman with Public Utilities Department
2. Utility Specialist II with Public Utilities Department

The policies and procedure contained herein will be strictly applied to employees required to have a CDL who operate a commercial motor vehicle as defined in Part 382 of Title 49 of the Code of Federal Regulations.

## **DRUG & ALCOHOL PROHIBITIONS**

Employees are strictly prohibited from engaging in the following activities:

### **Drug Prohibitions**

- Use of any controlled substance, except when administered by, or under the instructions of, a licensed medical practitioner, who has advised the employee that the substance will not affect the employee's ability to perform a safety-sensitive function. Be advised that the use of marijuana for medicinal purposes is not a legitimate explanation. Under federal law, the use of marijuana does not have a legitimate medical use in the United States.
- These are the drugs that will be tested for. All Testing conducted according to SAMHSA's guidelines checks for a ***Five-Panel*** illicit drugs plus, alcohol (ethanol, ethyl alcohol, booze).

These five illicit drugs are:

- Amphetamines (meth, speed, crank, ecstasy)
- THC (cannabinoids, marijuana, hash)
- Cocaine (coke, crack)
- Opiates (heroin, opium, codeine, morphine)
- Phencyclidine (PCP, angel dust)

However, the County is not limited in the number of substances they can test for and may include drugs that individuals legitimately and/or therapeutically take based on a physician's prescription. Although most private employers can test for any combination of drugs, there are commonly selected "panels."

The typical ***8-Panel Test*** includes the above-mentioned substances plus:

- Barbiturates (phenobarbital, butalbital, secobarbital, downers)
- Benzodiazepines (tranquilizers like Valium, Librium, Xanax)
- Methaqualone (Quaaludes)

The typical ***10-Panel Test*** includes the 8-Panel Test plus:

- Methadone (often used to treat heroin addiction)
- Propoxyphene (Darvon compounds)

Testing can also be done for:

- Hallucinogens (LSD, mushrooms, mescaline, peyote)
- Inhalants (paint, glue, hairspray)
- Anabolic steroids (synthesized, muscle-building hormones)
- Hydrocodone (prescription medication known as Lortab, Vicodin, Oxycodone)
- MDMA (commonly known as Ecstasy)
- Sale, purchase, transfer, possession, or presence in one's system of any controlled substance (except medically prescribed drugs) by any employee while on the County's premises, engaged in County business, operating County equipment, or while under the authority of the County.
- Testing positive for a controlled substance (except medically prescribed drugs).
- Refusal to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up drug test.

### **Alcohol Prohibitions**

- Reporting for duty or remaining on duty in a position requiring the performance of safety-sensitive functions while having an alcohol concentration of **.04** or greater.
- Consumption of alcohol in any form while performing safety-sensitive functions.

- Performance of any safety-sensitive function within 4 hours after consuming alcohol.
- Refusal to take a required alcohol test.
- Consumption of alcohol for 8 hours after an accident unless the employee has been given a post-accident test. This applies to employees with knowledge of an accident involving a commercial motor vehicle operating on a public road in commerce for which they performed a safety-sensitive function at or near the time of the accident.
- Refusal to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol test.

## **Definitions**

- *Alcohol* is defined as the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- *Alcohol use* is defined as the consumption of any beverage, mixture, or preparation, including any medication (prescribed or over-the-counter, intentional or unintentional), containing alcohol.
- *Covered Employee* shall include all active CDL driving employees of New Kent County who are subject to the terms and conditions of this Supplemental Drug and Alcohol Policy. Acknowledgement of Receipt of this Drug and Alcohol Policy shall be indication that the employee is subject to the policy.
- *Safety-Sensitive Functions* shall include: (1) all time spent at any County facility, other property, or on any public property, waiting to be dispatched, unless the employee has been relieved from duty by his or her supervisor; (2) all time spent inspecting, servicing, or conditioning any motor vehicle at any time; (3) all time spent at the driving controls of a motor vehicle in operation; (4) all time, other than driving time, in or upon any motor vehicle; (5) 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; and (6) all time fueling, repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- *FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse*, aka, Clearinghouse is a secure online database that gives employers, the FMCSA, State Driver Licensing Agencies (SDLAs), and State law enforcement personnel real-time information about commercial driver's license (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations. An act of Congress directed the Secretary of Transportation to establish the Clearinghouse. The Clearinghouse enables employers to identify drivers who commit a drug and alcohol program violation while working for one employer, but who fail to subsequently inform another employer (as required by current regulations).
- *General Applicability*: A employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any and all functions described or related to these described here.

## **TYPES OF DRUG & ALCOHOL TESTING**

Employees may be subject to each of the following types of drug and alcohol tests:

### **Pre-Employment (drug only)**

Employees shall be subject to a drug test prior to employment. No employee shall be permitted to perform any safety-sensitive function, including the driving of any County vehicle, until they have received a negative drug test result.

### **Post-Accident**

In the event of an accident involving a commercial motor vehicle operating on a public road in commerce, the involved employee shall be subject to a drug and alcohol test in the following circumstances:

- If the accident involved the loss of human life;
- If the employee receives a citation for a moving traffic violation arising from the accident, and the accident involves either:
  - Bodily injury to any person who immediately receives medical treatment away from the scene of the accident; or
  - One or more motor vehicles incurring disabling damage requiring the motor vehicle to be transported away from the scene by tow.

### **Random**

Employees shall be subject to random drug and alcohol testing. Random testing will be conducted without notice to randomly selected employees. Employees may be grouped into drug and alcohol testing pools based on job function, safety sensitive drivers must be in a separate pool and could include (*e.g.*, mechanic with a CDL). All employees within each pool have an equal chance of testing.

### **Reasonable Suspicion**

Employees shall be subject to reasonable suspicion drug and alcohol testing if a trained supervisor or trained County official believes or suspects that the employee is under the influence of drugs or alcohol (or both).

### **Return-to-Duty & Follow-Up**

Employees retained by the County after a positive test result or a test refusal shall be subject to return-to-duty drug and alcohol testing. No employee shall be permitted to perform any safety-sensitive function until they have received a verified negative drug and alcohol test result. Thereafter, such employees will be subject to certain follow-up drug and alcohol testing as established by Substance Abuse Professional (SAP).

## **DOT DRUG & ALCOHOL CONSEQUENCES**

### **Consequences of Using Drugs or Alcohol While Performing Safety-Sensitive Functions**

A covered employee who has engaged in prohibited drug or alcohol use during the performance of a safety-sensitive function will be immediately removed from performing safety-sensitive functions. All DOT positives will be reported to the federal Drug and Alcohol Testing Clearinghouse as required by law. Further, the employee will be subject to disciplinary action, up to and including termination.

### **Consequences of a Verified Positive Drug Test**

A covered employee who receives one (1) verified positive drug test result on a DOT required test will be immediately removed from safety-sensitive duties. An employee who has a positive DOT drug test cannot return to the performance of safety-sensitive functions until and unless the employee successfully completes the return-to-duty process described later. Also be aware that all DOT positives will be reported to the federal Drug and Alcohol Testing Clearinghouse. Notwithstanding the foregoing, an employee that receives one (1) verified positive drug test result will be subject to disciplinary action, up to and including termination.

### **Consequences of a Alcohol Test with a Concentration Greater than .04**

A covered employee who receives one (1) alcohol test with a result indicating an alcohol concentration of **.04** or greater will be immediately removed from safety-sensitive duties. An employee who has a positive alcohol test cannot return to the performance of safety-sensitive functions until and unless the employee successfully completes the return-to-duty process described later. Also be aware that all DOT positives will be reported to the federal Drug and Alcohol Testing Clearinghouse. Notwithstanding the foregoing, an employee whose test results indicate an alcohol concentration greater than **.04** will be subject to disciplinary action, up to and including termination.

### **Consequences of an Alcohol Test with a Concentration Greater than .02 but Less than .04**

A covered employee who is found to have an alcohol concentration of **.02** or greater but less than **.04** will be immediately removed from performing safety-sensitive functions until the employee is retested with a result below **.02** or until the start of the employee's next regularly scheduled duty period, if it occurs at least 8 hours following administration of the test. Notwithstanding the foregoing, an employee whose test results indicate an alcohol concentration greater than **.02** will be subject to disciplinary action, up to and including termination.

### **Consequences of Refusing to Submit to a Required Drug and/or Alcohol Test**

A covered employee who refuses to submit to a required drug and/or alcohol test or who receives a verified adulterated or substituted drug test result will be immediately removed from performing safety-sensitive functions. An employee cannot return to the performance of safety-sensitive duties until and unless the employee successfully completes the return-to-duty process described later. Also be aware that all DOT refusals are considered the same as a positive test and will be reported to the federal Drug and Alcohol Testing Clearinghouse as required by law. Notwithstanding the foregoing, an employee that refuses to submit to a required drug and/or alcohol test will be subject to disciplinary action, up to and including termination.

## **REFUSAL TO SUBMIT TO A DRUG AND/OR ALCOHOL TEST**

You are considered to have refused to take a drug and/or alcohol test if you:

### **Drug Test**

- Fail to appear at a collection site for any test (except a pre-employment test) within a reasonable time, as determined by the County, consistent with applicable DOT agency regulations, after being directed to do so by the County. This includes the failure of the employee to appear for a test when called by the County's third-party administrator;
- Fail to remain at the collection site until the testing process is complete; Provided that a person who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- Fail to provide a specimen;
- Fail to permit a monitored or observed collection if the County ordered or if the collector required the collection to be monitored or observed;
- Fail to provide a sufficient amount of urine specimen, provided the Medical Review Officer (MRO) finds there was no medical reason for the employee to provide insufficient amount of urine;
- Fail or decline to take an additional drug test that the County or collector has directed;
- Fail to undergo a medical examination or evaluation the MRO or the County has directed;
- Fail to cooperate with any part of the specimen collection process;
- Fail, for an observed collection, to follow the instructions to raise and lower clothing and turn around;
- Possess or wear a prosthetic or other device that could be used to interfere with the collection process if the employee is found to have or wear a prosthetic or other device designed to carry clean urine or a urine substitute;
- Admit to the collector to having adulterated or substituted the specimen;
- Adulterate or substitute a urine specimen; or
- Admit to the MRO to having adulterated or substituted the specimen.

### **Alcohol Test**

- Fail to appear at an alcohol test site for any test within a reasonable time, as determined by the County, consistent with applicable DOT agency regulations, after being directed to do so by the County. This includes the failure of the employee to appear for a test when called by the County's third-party administrator;
- Fail to remain at the alcohol test site until the testing process is complete;
- Fail to provide an adequate amount of saliva or breath;
- Fail to provide a sufficient breath specimen, provided the physician finds that there was no medical reason for the employee to provide an insufficient amount of breath;
- Fail to undergo a medical examination or evaluation as the County has directed as part of the insufficient breath procedures;
- Fail to sign the certification statement at Step 2 of the Alcohol Testing Form (ATF); or
- Fail to cooperate with any part of the testing process.



## **DRUG & ALCOHOL TESTING PROCEDURES**

Drug and/or alcohol testing shall be conducted at a facility designated by the County. Specimen collection, analysis and reporting shall be conducted in accordance with the procedures outlined below which are consistent with the federal regulations enumerated in 49 CFR Part 40 and all applicable guidance and state laws. These collection procedures are designed to protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

### **Drug Testing Procedures**

- A DOT drug testing Chain of Custody Form (CCF) (both printed or E-chain/E-CCF) will be used to document the chain of custody from the time the specimen is collected at the testing facility until it is tested at the laboratory.
- Before you proceed to a predetermined testing clinic to provide your drug and/or alcohol test specimen, you will be provided a pre-generated testing “passport” with instructions and information for the clinic. This will be given to you either electronically by email or text message, or you will receive a hard copy. The clinic will need to scan your passport to initiate the testing process, so you must have your passport available when you arrive
- The collection of the specimen must be conducted in a suitable location and must contain all necessary personnel, materials, equipment, facilities, and supervision to provide for collection, security and temporary storage and transportation of the specimen to a certified laboratory.
- The employee should have and present positive identification to the collector. The employee may also request positive identification of the collection site employee.
- The employee must provide a specimen meeting the specified volume and temperature requirements.
- All identifying information must be entered on the CCF by the collection site person. The CCF will be signed by the collector, certifying collection was accomplished in accordance with the instructions provided. The employee must also sign the CCF indicating the specimen was his/hers.
- A urinalysis will be performed by a laboratory certified by the Department of Health and Human Services (DHHS) that has been retained by the County. The laboratory will be required to maintain strict compliance with federally-approved chain-of-custody procedures, quality control, maintenance, and scientific analytical methodologies.
- The laboratory must report all test results directly to the County’s designated medical review officer (MRO). The MRO is responsible for reviewing and interpreting all confirmed positive, adulterated, substituted, or invalid drug test results. The MRO must determine whether alternative medical explanations could account for the test results. The MRO must also give the employee who has a positive, adulterated, substituted, or invalid drug test an opportunity to discuss the results prior to making a final determination. After the decision is made, the MRO must notify the County’s designated employer representative (DER).
- An employee who receives a positive, adulterated, or substituted drug test result has 72 hours to request the test of the split specimen (which is provided at the time of original collection). If the employee requests the testing of the split, the MRO must direct (in writing) the lab to provide the split specimen to another certified laboratory for analysis. The employee will pay for the testing of the split specimen.

## Alcohol Testing Procedures

Alcohol testing may be conducted by a qualified Screening Test Technician (STT) or Breath Alcohol Technician (BAT). STTs are only permitted to conduct the first test given to an employee by using either a breath or saliva test (Screening Test). A BAT is authorized to conduct a Screening Test, but, unlike a STT, is also authorized to conduct the second test given to an employee whose test result is **.02** or above (Confirmation Test). For a Screening Test, the STT or BAT may use an approved Alcohol Screening Device (ASD) or an Evidential Breath Testing device (EBT). For a Confirmation Test, the BAT is required to use an EBT.

### Screening Tests

- The DOT Alcohol Testing Form (ATF) will be used to document the results of an alcohol screening test.
- The testing will be performed in a private setting. Only authorized personnel will have access and are the only individuals who can see or hear the test results.
- The employee should have and present positive identification to the STT or BAT at the test site. The employee may also request positive identification of the STT or BAT.
- **When an ASD is used**, the STT or BAT must check the device's expiration date and show it to the employee. A device may not be used after its expiration date.
- The STT or BAT will open an individually wrapped or sealed package containing the device in front of the employee and he/she will be asked to place the device in his/her mouth and use it in the manner described by the device's manufacturer.
- The employee must work with the STT or BAT to perform the test, which includes the insertion of the device mouth piece in the employee's mouth and the exhalation (breathing out) must be performed in the manner described by the device's manufacturer.
- The STT or BAT should wear single-use examination gloves and must change the gloves following each test.
- When the device is removed from the employee's mouth, the STT or BAT must follow the manufacturer's instructions to ensure the device is activated.
- If the procedures listed above cannot be successfully completed, the device must be discarded and a new test must be conducted using a new device. The employee will be offered the choice of using the new device or having the STT or BAT use the new device for the test.
- If the new test cannot be successfully completed, the employee will be directed to immediately take a screening test using an EBT.
- **When an EBT is used**, the mouthpiece of the breath testing device must be sealed before use and opened in the employee's presence. The mouthpiece is then inserted into the breath testing device.
- The employee must blow forcefully into the mouthpiece of the testing device for at least 6 seconds or until an adequate amount of breath has been obtained.
- Once the test is completed, the BAT must show the employee the results.
- The result displayed on the device must be read within 15 minutes of the test. The STT or BAT must show the employee the device and its reading and enter the result on the ATF.
- If the reading on the ASD or EBT is less than **.02**, both the employee and the STT or BAT must sign and date the result form. The form will then be confidentially forwarded to the County's DER. No further testing is authorized.
- If the reading on the ASD or EBT is **.02** or more, a confirmation test must be performed.

## **Confirmation Tests**

- If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test will be performed. If a different BAT will conduct the confirmation test, the BAT who conducts the screening test will complete and sign Step 3 of the ATF. The BAT will provide the employee with Copy 2 of the form.
- In the presence of the employee, the BAT will conduct an “air blank” to ensure that the device is working correctly. The BAT must show the reading to the employee. The air blank result must be **.00**. If the reading is greater than **.00**, the BAT will conduct one more air blank. If the reading is greater than **.00**, testing will not proceed using the instrument. However, testing may proceed on another instrument.
- The BAT will instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test and will not be less than 15 minutes. The BAT will explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee’s benefit. The BAT will also explain that the test will be conducted at the end of the waiting period. If the employee has disregarded the instruction, the BAT will so note in the “Remarks” section of the ATF.
- If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT will initiate a new breath alcohol testing form. The BAT will complete Step 1 on the form. The employee will then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification will be regarded as a refusal to take the test. The BAT will note in the “Remarks” section of the form that a different BAT conducted the screening process.
- If the employee does not sign the certification in Step 4 of the form, it will not be considered a refusal to be tested. In this event, the BAT will note the failure to sign in the “Remarks” section of the form.
- A breath alcohol test is invalid under the following circumstances:
  - The EBT does not pass its next external calibration check (invalidates all test results of 0.02 or greater on tests conducted since the last valid external calibration test); this does not invalidate negative tests.
  - The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test.
  - The BAT does not perform an air blank on the EBT before a confirmation test or such an air blank does not result in a reading of **.00**.
  - The BAT does not sign the form.
  - An EBT fails to print a confirmation test result.
  - The sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

## **D&A CLEARINGHOUSE REQUIREMENTS**

The federal Drug and Alcohol Clearinghouse herein referred to as “Clearinghouse” after 20 years of discussions, hearings and finally regulations, was officially opened for registration in January 2020. This government managed electronic database will track all covered employees with commercial driver’s licenses who have tested positive for prohibited drugs or alcohol use, as well as refusals to take required drug tests, and other drug and alcohol violations. In addition, when a covered employee driver has been found to be in violation and then completes the required return-to-duty process, this information will also be recorded in the clearinghouse.

The clearinghouse has long been sought by industry as a way to keep employee commercial drivers who have violated federal drug and alcohol rules from lying about or masking those prohibited results and simply getting a job with another motor carrier employer or becoming an owner-operator. For additional information also go to: <https://clearinghouse.fmcsa.dot.gov/>

### **The Clearinghouse is Required by Law**

Effective Jan. 6, 2020, the rule requires our County and its service agents to populate the clearinghouse with the following information:

- Employees' DOT drug and alcohol violations under Part 382 of the Federal Motor Carrier Safety Regulations as part of the hiring process, and
- Posting to the Clearinghouse all prohibited driver activity, who have tested positive for prohibited drugs or alcohol use, as well as refusals to take required drug tests, and other drug and alcohol violations.
- An employer’s report of actual knowledge, as defined as 382.107
- The requirement to query the clearinghouse annually for information relating to prohibited drug and alcohol testing behavior by the employee. See limited query consent form.
- Verification of a CDL driver's completed steps in the DOT return-to-duty process.

The database will contain violation information that occurs on or after Jan. 6, 2020. So even if a violation occurs on Jan. 5 and a driver is disqualified, that doesn’t go into the clearinghouse. The FMCSA has proposed a three-year delay for state licensing agencies such as the DMV in California inquiring and reporting to the clearinghouse.

### **Covered Employee Drivers Need to Know Their Rights and Responsibilities**

If covered employee changes companies, you will have to register in the clearinghouse in order to give permission for the new hiring motor carrier to make queries into your clearinghouse testing information.

All companies are required to enter selected information into the clearinghouse, as listed in Section 382.601(b)(12). The following is the best-practices information that all employees should understand:

- All types of inquiries County will perform consistent with (Section 382.701);
- Employee driver procedures on signing up for access to the clearinghouse;
- Covered employees will be provided information on how they may obtain a copy of their clearinghouse records (Sections 382.707, 382.709);
- Employees must understand the procedures for correcting information in the database (Section 382.717);
- An awareness that state licensing authorities (DMVs) will have access to the database (Section 382.725); and
- Clarification on an employee's obligation to notify a current employer(s) (in writing) of DOT testing violations occurring under a different employer (Section 382.415)

It is important to understand that all covered employee drivers are “giving their permission” to employer and the employers agents to access employee driver’s clearinghouse D&A information. Which means if

you the covered employee refuse to allow access to the clearinghouse, that it will likely impact your employability.

Lastly, all covered employee drivers have a right to review their clearinghouse information, and if the driver finds a discrepancy or disagree with the records, they are encouraged to write to FMCSA and dispute any issues in question and potentially correct any incorrect records. All these processes are easily defined and available online at <https://clearinghouse.fmcsa.dot.gov/>

**General Consent for Limited Queries of the Federal Motor Carrier Safety Administration (FMCSA)  
Drug and Alcohol Clearinghouse**

I, \_\_\_\_\_, hereby provide consent to New Kent County to conduct a limited query of the FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) to determine whether drug or alcohol violation information about me exists in the Clearinghouse.

I understand that if the limited query conducted by New Kent County indicates that drug or alcohol violation information about me exists in the Clearinghouse, FMCSA will not disclose that information to New Kent County without first obtaining additional specific consent from me.

I further understand that if I refuse to provide consent for New Kent County to conduct a limited query of the Clearinghouse, New Kent County must prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA's drug and alcohol program regulations.

Employee Signature

Date

\_\_\_\_\_

\_\_\_\_\_

## **RETURN-TO-DUTY PROCESS AND FOLLOW-UP PROCEDURES (If Applicable)**

The County is not required to provide a Substance Abuse Professional (SAP) evaluation or any subsequent recommended education or treatment through an employee assistance program for an employee who has violated a DOT drug and alcohol regulation. If the County, at its sole discretion, offers the employee an opportunity to return to a DOT safety-sensitive duty following a violation, the County must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of the regulations and that the employee successfully complies with the SAP's evaluation recommendations.

### **SAP Responsibility**

- Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;
- Referring the employee to an appropriate education and/or treatment program (EAP);
- Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;
- Providing the DER with a follow-up drug and/or alcohol testing plan for the employee;
- Providing the County and the employee with recommendations for continuing education and/or treatment.

### **Return-to-Duty Testing**

If the County decides to permit the employee to return to the performance of safety-sensitive functions, the County must ensure that the employee takes a return-to-duty test. The return-to-duty test cannot occur until:

- The employee has been evaluated by a SAP to determine what education and/or treatment the employee needs to resolve problems related to alcohol or drug use;
- The employee has successfully complied with the prescribed education and/or treatment;
- The employee has been re-evaluated by the SAP to ensure that the employee has properly followed the education and/or treatment program.

### **Follow-Up Testing**

- A SAP must establish a written follow-up testing plan for each employee who has committed a DOT drug or alcohol regulation violation and who seeks to resume the performance of safety-sensitive functions. The SAP does not establish this plan until after it is determined that the employee has successfully complied with the education and/or treatment recommendations.
- The SAP must present a copy of the follow-up testing plan directly to the County's DER.
- The SAP is the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if an employee had a positive drug test, but the SAP evaluation or the treatment program professionals determined that the employee has an alcohol problem as well, the SAP should require that the employee have follow-up tests for both drugs and alcohol.
- The SAP must, at a minimum, direct that the employee be subject to six (6) unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions. The SAP may, however, require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty.

- The SAP may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period. The SAP is not to establish the actual dates for the follow-up tests he/she prescribes. The decision on specific dates to test is the responsibility of the County.
- The County will not impose additional testing requirements on the employee that go beyond the SAP's follow-up and random testing plan.